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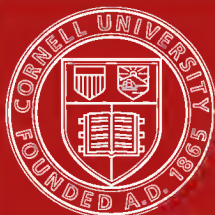
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A TREATISE  
ON  
PRELIMINARY PROCEEDINGS  
IN THE  
COURTS OF THE UNITED STATES,  
DESIGNED FOR THE USE OF ATTORNEYS PRACTICING IN  
THE FEDERAL COURTS, AND ESPECIALLY AS A  
M A N U A L  
FOR  
UNITED STATES COMMISSIONERS,  
WITH NUMEROUS PRACTICAL FORMS AND CITATIONS  
FROM ACTS OF CONGRESS.

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BY EDWARD T. ROE, B. L.,  
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ILLINOIS.

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SPRINGFIELD:  
D. & J. B. BROWN, PUBLISHERS.  
1874.



B42320

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## P R E F A C E .

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As its title implies, this work is designed as a Manual for the use of United States Commissioners, containing the necessary instructions for the conduct of all official business that may come before them; giving full information as to the manner of making up their reports, securing payment of their accounts with the government, and of making their returns into court; and embracing all the Acts of Congress (or the sections thereof) relating to their jurisdiction and duties; together with concise practical forms and precedents.

It is hoped that the work will meet a demand long felt and frequently expressed among those for whom it is designed. This is the Author's apology for submitting it to their favorable consideration.

E. T. R.

*Springfield.*



# UNITED STATES COMMISSIONERS:

## THEIR POWERS AND DUTIES.

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### CHAPTER I.

#### CIVIL AND MISCELLANEOUS.

**APPOINTMENT.**—The Circuit Courts of the United States [Act of Feb. 20, 1812, sec. 1, 2 Stat. 679,] and the Supreme Courts of the Territories [Act of September 8th, 1850, sec. 2, 9 Stat. 462,] are authorized to appoint such and so many discreet persons in different parts of the district where the existing provisions, by law, for taking bail and affidavits in civil causes are inadequate, or on account of the extent of such district, inconvenient, as such courts shall deem necessary, to take acknowledgments of bail and affidavits.

By several subsequent acts the powers of these commissioners have been greatly enlarged, and as now defined are comprised under the following sections :

## SECTION I.

### AFFIDAVITS, AFFIRMATIONS AND BAIL.

Acknowledgments of bail and affidavits taken before commissioners (in pursuance of the above-mentioned statutes,) shall have the like force and effect as if taken before any judge of the Circuit Court ; and any person swearing falsely in and by any such affidavit, shall be liable to the same punishment as if the same affidavit had been made or taken before a judge of said court [Act of Feb. 20th, 1812, sec. 1, 3 Stat. at L. 679.]

Affidavits and bail in civil causes to be used in the several District Courts of the United States may be taken before commissioners. [Act of March 1st, 1817, 3 Stat. at L. 350.]

### OATHS AND AFFIRMATIONS.

1. In all cases in which, under the laws of the United States, oaths, or affirmations or acknowledgments, may now be taken or made before any justice

or justices of the peace, of any State or Territory, such oaths, affirmations or acknowledgments may be hereafter also taken and made by or before any notary public, duly appointed, in any State or Territory; and, when certified under the hand and official seal of such notary, shall have the same force and effect as if taken or made by or before such justice or justices of the peace.                   \*                   \*                   \*                   \*

2. All the powers and authority conferred in and by the preceding section of this act upon notaries public, shall be, and the same are hereby vested in, and may be exercised by, any commissioner appointed, or hereafter to be appointed, by any Circuit Court of the United States, under any Act of Congress authorizing the appointment of commissioners to take bail, affidavits or depositions in causes pending in the courts of the United States. [Act of Sept. 16th, 1850, 9 Stat. at L. 458.]

## SECTION II.

### BANKRUPTCY.

Evidence or examination in any of the proceedings under this act [“An Act to establish a uniform system of Bankruptcy throughout the United States.”] may

be taken before the court, or a register in bankruptcy, *viva voce* or in writing, before a commissioner of the Circuit Court, or by affidavit, or on commission, and the court may direct a reference to a register in bankruptcy, or other suitable person, to take and certify such examination; and may compel the attendance of witnesses, the production of books and papers, and the giving of testimony in the same manner as in suits in equity in the Circuit Court. [Act of March 2d, 1867, sec. 38, 14 Stat. at L. 535.]

And such commissioners may take proofs in bankruptcy in all cases, subject to the revision of such proofs by the register and by the court, according to the provisions of the said act. [Act of July 27th, 1868, sec. 3, 15 Stat. at L. 228.]

### SECTION III.

#### DEPOSITIONS (*de bene esse.*)

When the testimony of any person shall be necessary in any civil cause depending in any district in any court of the United States, who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is

about to go out of the United States, or out of such district, *and to a greater distance from the place of trial than as aforesaid* before the time of trial, or is ancient or very infirm, the deposition of such person may be taken *de bene esse* before any justice or judge of any of the courts of the United States, or before any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a County Court or Court of Common Pleas of any of the United States [or, by the Act of March 1st, 1817, 3 Stat. at L. 350, any of the commissioners appointed under the Act of Feb. 20th, 1812,] not being of counsel or attorney to either of the parties, or interested in the event of the cause, *Provided*, that a notification, &c. [The provision regarding the notice to be given to the opposite party having been changed by the Act of May 9th, 1872, it is here omitted.] And every person deposing as aforesaid, shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given, after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by

the deponent in his presence. And the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice, if any, given to the adverse party, be by him, the said magistrate, sealed up and directed to such court, and remain under his seal until opened in court. And any person may be compelled to appear and depose as aforesaid in the same manner as to appear and testify in court. [Act of Sept. 24th, 1789, 1 Stat. at L. 88.]

Hereafter all depositions taken *de bene esse*, to be used in any civil cause depending in any court in any district of the United States, for the causes and before the officers mentioned in section 30 of the act entitled "An Act to establish the Judicial Courts of the United States;" approved Sept. 24th, 1789, shall be taken upon reasonable notice, to be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, which notice shall state the name of the witness, and the time and place of the taking of his deposition; and, in all cases *in rem*. the person having



the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge, authorized to hold courts in such district or circuit, shall think reasonable and direct.

But this act shall not be construed to affect the power of any such court to cause testimony to be taken under commission, according to the course of the common law, to be used therein. [Act of May 9th, 1872, 17 Stat. at L. 89.]

The authority to take depositions in this manner, being in derogation of the rules of the common law, has always been construed strictly, and therefore it is necessary to establish that all the requisitions of the law have been complied with before such testimony is admissible.

*Bell vs. Morrison*, 1 Peters, 351.

All the facts necessary to make the deposition evidence under the statute must be certified by the commissioner.

Janet *vs.* Knowles, 1 Cranch C. C., 523.

And such certificate is good evidence of the facts stated therein, so as to enable the deposition to be read to the jury, if all the necessary facts are there sufficiently disclosed.

Bell *vs.* Morrison, 1 Peters, 356.

#### THE NOTICE.

By the act of May 9th, 1873, all depositions taken *de bene esse*, for the causes and before the officers mentioned in section thirty of the act of September twenty-fourth, seventeen hundred and eighty-nine, must be taken upon reasonable notice, to be given in writing, by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, which notice must state the name of the witness, and the time and place of the taking of his deposition.

The notice may be as follows :

NOTICE TO TAKE DEPOSITION (*de bene esse*.)

UNITED STATES OF AMERICA, }  
*District of* ——— } CIRCUIT COURT.

In the ——— Circuit.

A. B. }  
*vs.* } *Assumpsit.*  
 C. D. }

You will please take notice that E. F., a necessary witness on behalf of the plaintiff in above cause, and living at ——— in the State of ——— [*here state reason for taking deposition, as, "a greater distance than one hundred miles from ——— the place of trial of said cause,"*] will be examined *de bene esse*, on the part of the plaintiff in above cause, before L. M., a commissioner duly appointed by the Circuit Court of the United States, for the ——— district of ——— by virtue of the act entitled "An Act for the more convenient taking of affidavits and bail in civil causes," at, &c. [*state time and place of taking deposition*] or before some other officer authorized by law to take such deposition *de bene*

esse, and at which time and place you are hereby notified to be present, etc.

—— ——— *Att'y for Plaintiff.*

To—— ——— *Att'ys for Def't.*

We do hereby acknowledge that the above notice has been duly served upon us, this——day of——A. D. 18——.

—— ——— *Att'ys for Def't.*

A convenient and satisfactory mode of effecting the service of notice, is by presenting the original notice to the party or his attorney of record, securing his signature to the acknowledgment of service, and leaving a copy thereof with him for reference. The original notice should then be sent to the commissioner who is to take the deposition, to be by him attached to and returned with the deposition. The notice should in all cases be given by the party or his attorney proposing to take the deposition, and not, as formerly, by the magistrate. It should show on its face that the contingency has happened which confers jurisdiction on the magistrate, and gives a right to the party to have

the deposition taken, so that the party on whom it is served may be able to judge whether it is necessary or proper that he should attend.

*Harris vs. Wall*, 7 Haw. 705.

Thus, it should show that the testimony desired is of a necessary witness:

1. Living at a greater distance from the place of trial than one hundred miles (and, if the person whose testimony is desired lives within the district, even though at a greater distance from the place of trial than as aforesaid, the notice should show that the party has been duly subpoenaed, and for some sufficient cause cannot attend.

*Petapsco Insurance Co. vs. Southgate*, 5 Pet., 604 ;) Or,

2. Bound on a voyage to sea; or,
3. About to go out of the United States; or,
4. Out of such district, and to a greater distance from the place of trial than one hundred miles, before the time of trial; or,
5. Is ancient or very infirm.

It is essential to the validity of the deposition that all the requirements of section 30 of the act of 1789, and those of the act of May 9th, 1872, should be observed.

The following formula may be readily adapted :

PRECEDENT FOR DEPOSITION (*de bene esse*).

DISTRICT OF——— }  
*State of——County of——* } ss.

Be it remembered, that on the——day of——  
 A. D. 18—, before me, a Commissioner appointed  
 by the Circuit Court of the United States, within  
 and for the——district of——in the——Circuit, by  
 virtue of the act entitled “An Act for the more  
 convenient taking of affidavits and bail in civil  
 causes depending in the courts of the United  
 States,” at my office, [*state location*] in the city  
 of——in the county of——and State aforesaid, and  
 within the said——district of——between the usual  
 hours of business, were produced and personally  
 came before me [*state names of witnesses*] witness-  
 es in behalf of the plaintiff, to depose in a civil  
 cause depending in the Circuit (*or District*) Court  
 of the United States, for the——district of——held

at—in the last said district, on the common law side of said court, wherein A. B. is plaintiff, [*if more than one, name them all*], and Y. Z. is defendant, [*name all the defendants*], in an action of *assumpsit*, and whose testimony is alleged to be material and necessary in said civil cause, in behalf of the plaintiff.

And the said [*name all the witnesses*], being of lawful age and sound mind, and being by me first carefully examined, cautioned and duly sworn on their respective corporal oaths, to testify the whole truth touching the matters in controversy in said civil cause, respectively depose and say as follows:

Deposition of——, a witness produced and sworn as aforesaid, on behalf of the plaintiff: [*Here give the testimony of the witness, which must be reduced to writing by the commissioner, or by the deponent in his presence. The deposition should then be read over to the witness, and signed and sworn to by him before the next witness is examined. Then proceed with the second and third witnesses in like manner to the end, and close as follows*]:

I do hereby certify that the foregoing depositions of [*state the names of the witnesses*], were, when taken, then and there reduced to writing by me, in the presence of the said deponents, and by them respectively subscribed in my presence after having been so reduced to writing.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that the deponents [*here state the reason for taking deposition, as, "live in the city of——in the State of——, more than one hundred miles from——, in the said——district of——, where the said civil cause is appointed by law to be tried.*]

I further certify that I am not of counsel nor attorney to either of the parties in this suit, nor interested in the event of this cause.

I further certify that, it being impracticable for me to deliver said depositions with my own hand to the court for which they were taken, I have retained the same for the purpose of being sealed up by me, and speedily and safely transmitted by the United States mail, to the said court, for which they were taken, and to remain under my seal until there opened.



I further certify that the fee for taking said depositions, amounting to \$——, has been paid to me by the plaintiff, and the same is just and reasonable for the services performed.

Given under my hand, etc, at——in the said district of——this——day of——A. D. 18——.

Y. Z., *Commissioner as aforesaid.*

The depositions should then be sealed up, and on the face of the package should be endorsed by the commissioner:

“To the Clerk of the Circuit (*or District*) Court of the United States, for the (*Southern*) District of (*Illinois, Springfield, Illinois.*)”

And further, as follows:

“Depositions on the part of the (*plaintiff,*) in the case of——*vs.*——.”

#### SECTION IV.

##### DECISIONS OF CONSULS.

The commissioners and the Circuit and District Courts of the United States have full power and authority to issue process, and have jurisdiction, upon the application or petition of foreign consuls,

etc., to enforce the awards, arbitrations and decrees of foreign consuls and commercial agents, who are authorized, under treaty stipulations of their governments with the United States, to sit as judges and arbitrators between the captains and crews of the vessels in our ports belonging to the nations whose interests are committed to their charge. [Act of Aug. 8th, 1846, 9 Stat. at L. 78].

## SECTION V.

### LETTERS ROGATORY.

Where letters rogatory shall have been addressed from any court of a foreign country to any circuit court of the United States, and a United States commissioner designated by said court to make the examination of witnesses in said letters mentioned, said commissioner shall be empowered to compel the witnesses to appear and depose in the same manner as to appear and testify in court. [Act of March 1st, 1855, section 2.]

The testimony of any witness residing within the United States, to be used in any suit for the recovery of money or property depending in any

court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party, or shall have an interest, may be obtained to be used in such suit. If a commission or letters rogatory to take such testimony shall have been issued from the court in which said suit is pending, on producing the same before the district judge of any district where said witness resides or shall be found, and on due proof being made to such judge that the testimony of any witness is material to the party desiring the same, such judge shall issue a summons to such witness, requiring him to appear before the officer or commissioner named in such commission or letters rogatory, to testify in such suit. Such summons shall specify the time and place where said witness is required to attend, which place shall be within one hundred miles of the place where the witness resides or shall be served with said summons. [Act of March 3rd, 1863, sec. 1, 12 Stat. at L. 769.]

No witness shall be compelled to appear or to testify before any commissioner or officer to take testimony under letters rogatory, issued or to be issued from any court in any foreign country, in any suit or

proceeding in which the government of such foreign country shall be a party of record or in interest, except for the purpose of answering specific written interrogatories issued with and accompanying such letters rogatory, and addressed to such witness; *Provided*, That when counsel for all the parties attend the examination, they may consent that questions in addition to those accompanying the letters rogatory may be put to the witness, unless the letters rogatory exclude such additional interrogatories.

No witness shall be required on such examination, or any other under letters rogatory, to make any disclosure or discovery which shall tend to criminate him either under the laws of the State or Territory within which such examination is had, or any other, or any foreign state. [Act of March 3rd, 1873, sec. 2, 17 Stat. at L. 581.]

## SECTION VI.

### SEAMEN'S WAGES.

\* \* \* As soon as the voyage is ended, and the cargo or ballast be fully discharged at the last port of delivery, every seaman or mariner shall

be entitled to the wages which shall be then due according to his contract ; and if such wages shall not be paid within ten days after such discharge, or if any dispute shall arise between the master and seamen or mariners touching the said wages, it shall be lawful for the judge of the district (or, by the Act of Aug. 23rd, 1842, 5 Stat. at L. 515, a Commissioner of the Circuit Court) where the said ship or vessel shall be, or in case his residence be more than three miles from the place, or of his absence from the place of his residence, then, for any judge or justice of the peace, to summon the master of such ship or vessel to appear before him, to show cause why process should not issue against such ship or vessel, her tackle, furniture and apparel, according to the course of admiralty courts, to answer for the said wages ; and if the master shall neglect to appear, or appearing, shall not show that the wages are paid, or otherwise satisfied or forfeited, and if the matter in dispute shall not be forthwith settled, in such case the judge or justice shall certify to the clerk of the court of the district, that there is sufficient cause of complaint whereon to found admiralty process. [Act of July 20th, 1790, 1 Stat. 133.]

A seaman can not deprive himself of his right to sue under the above act by an agreement in the shipping articles that he will not sue for his wages until a certain time after his services are ended. Such agreement will be held void as against the seaman.

The Cypress, 1 Blatchford and Howland, 83.

Upon complaint of a seaman or mariner that his wages are due and unpaid (which complaint should contain an itemized account of the same, sworn to by the complainant), the commissioners will issue summons as follows :

#### SUMMONS FOR SEAMAN'S WAGES.

(SOUTHERN) DISTRICT OF——SS.

THE UNITED STATES OF AMERICA.

*To the Marshal of the said District, Greeting :*

We command you to summon C. D., the master of the ship (*or vessel*) M., to be and appear before me, G. H., a commissioner appointed by the Circuit Court of the United States to take acknowledgments of bail and affidavits, and also to take depositions of

witnesses in civil causes at my office [*state location*], in the city of——, in said district, at——o'clock, in the——noon of that day, then and there to show cause, if any he has, why process should not issue out of the District Court of said district, against the ship (*or vessel*) M., her tackle, furniture and apparel, according to the course of admiralty courts, to answer the claim of [*state name of claimant*] for mariner's wages. And have you then and there this writ.

Given under my hand and seal this——day of——  
A. D. 18—.

—— ——— *U. S. Commissioner as aforesaid.*

The commissioner's certificate to the clerk that there is sufficient cause to found admiralty process may be in the following form :

#### CERTIFICATE TO FOUND ADMIRALTY PROCESS.

———DISTRICT OF———SS.

*To the Clerk of the District Court for the District aforesaid:*

I, a commissioner appointed by the Circuit Court of the United States for said district, to take

acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes, do hereby certify that there is sufficient cause of complaint whereon to found admiralty process against the ship (or vessel) M., her tackle, furniture and apparel, to answer for the wages of [*state name of claimant.*]

Dated this——day of——A. D. 18—.

—— ——— *U. S. Commissioner as aforesaid.*

## SECTION VII.

### STIPULATIONS (*in Admiralty.*)

Bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court. [Rule No. 5 of Rules in Admiralty, adopted at the December Term of the Supreme Court of the United States for the year 1844, in pursuance of the Act of August 23rd, 1842.]

Stipulations in admiralty and maritime suits may be taken in open court, or by the proper judge at chambers, or, under his order, by any commissioner



of the court who is a standing commissioner of the court, and is now authorized by law to take affidavits of bail, and also depositions in civil causes pending in the courts of the United States.—[Rule No. 35, *idem.*]

## CHAPTER II.

### CRIMINAL.

The commissioner is an examining and committing magistrate, bound to hear all complaints of the United States in his district, to cause the offender to be arrested, to examine into the matters charged, to summon witnesses for the government and for the accused; and to commit for trial or to discharge from arrest, according as the evidence tends or fails to support the accusation. For the faithful discharge of his duty in these particulars he alone is accountable. He has no divided responsibility with any other officer of the government; nor is he subject to any other's control.

United States *vs.* Schumann, 2 Abb. (U. S. Reports) 523.

### SECTION VIII.

#### ARREST, BAIL AND COMMITMENT.

For any crime against the United States the offender may, by any justice or judge of the United

States, or by any justice of the peace or other magistrate of any of the United States where he may be found, (or by any commissioner of the circuit court,—see below), agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States, as by this act, has cognizance of the offence. And copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case; which recognizances the magistrate before whom the examination shall be may require on pain of imprisonment. And if such commitment of the offender, or the witnesses, shall be in a district other than that in which the offence is to be tried, it shall be the duty of the judge of that district where the delinquent is imprisoned, seasonably to issue, and of the marshal of the same district to execute, a warrant for the removal of the offender and the witnesses, or either of them, as the case may be, to the district in which the trial is to be had.

And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which case it shall not be admitted but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence, and usages of law. And if a person committed by a justice of the supreme court or a judge of a district court for an offence not punishable with death, shall afterwards procure bail, and there be no judge of the United States in the district to take the same, it may be taken by any judge of the supreme or superior court of law of such State. [Act of Sept. 24th, 1789, sec. 33, 1 Stat. at L. 73.]

The commissioners who now are, or hereafter may be, appointed by the circuit courts of the United States to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes, shall and may exercise all the powers that any justice of the peace, or other magistrate, of any of the United States, may now exercise in respect to offenders for any crime or offence against the United States, by arresting, imprisoning or bailing the same, under

and by virtue of the (above) 33rd section of the Act of the 24th of September, A. D. 1789, entitled "An Act to establish the Judicial Courts of the United States." [Act of Aug. 23rd, 1842, sec. 1, 5 Stat. at L. 516.]

In all hearings before any justice or judge of the United States, or any commissioner appointed as aforesaid, under and in virtue of the said 33rd section of the act entitled "An Act to establish the Judicial Courts of the United States," it shall be lawful for such justice, judge or commissioner, where the crime or offence is charged to have been committed on the high seas or elsewhere within the admiralty and maritime jurisdiction of the United States, in his discretion to require a recognizance of any witness produced in behalf of the accused, with such surety or sureties as he may judge necessary, as well as in behalf of the United States, for their appearing and giving testimony at the trial of the cause, whose testimony, in his opinion, is important for the purpose of justice at the trial of the cause, and is in danger of being otherwise lost; and such witnesses shall be entitled to receive from the United States the usual compensation allowed to government witnesses for their

detention and attendance, if they shall appear and be ready to give testimony at the trial. [*Idem*, sec. 2.]

#### SURRENDER OF BAIL.

Any party charged with a criminal offence, and admitted to bail, may, in vacation, be arrested by his bail, and delivered to the marshal or his deputy, before any judge or other officer having power to commit for such offence; and at the request of such bail, the judge or other officer shall re-commit the party so arrested to the custody of the marshal, and endorse on the recognizance, or certified copy thereof, the discharge and exoneratur of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law. [Act of Aug. 8th, 1846, sec. 4, 9 Stat at L. 72.]

#### NEW BAIL.

Upon the necessary proof being made to any judge of the United States, or other magistrate having authority to commit on criminal charges against the laws of the United States, that a person previously admitted to bail on any such criminal charge is about to abscond, and that his bail

is insufficient, it shall and may be lawful for any such judge or magistrate to require such person to give better security, or, for default thereof, to cause him to be committed to prison; and, to that end, an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued by such judge or magistrate, setting forth the cause thereof. [*Idem*, sec. 6.]

Whenever two or more charges are or shall be made, or two or more indictments shall be found against a person, only one writ or warrant shall be necessary to arrest and commit him for trial; and it shall be sufficient to state in the writ the name or general character of the offences, or to refer to them only in very general terms. Only one writ or warrant shall be necessary to remove a prisoner from one district to another; a copy of which may be delivered to the sheriff or jailor from whose custody the prisoner may be taken, and another copy thereof to the sheriff or jailor to whose custody he may be committed; and the original writ, with the marshal's return thereon, shall be returned to the clerk of the district to which he may be removed. [Act of Feb. 26, 1853, 10 Stat. at L. 162.]

## THE JURISDICTION OF THE COMMISSIONER

Extends to all persons found in his district charged upon oath with having committed any crime or offence against the United States. [4 Opin. 206.]

## ARREST AND REMOVAL.

It is not lawful to arrest a person in one district, for an alleged offence against the laws of the United States, and remove him to another district for examination, nor can a district judge authorize such removal. The offender, upon being arrested, is entitled to be taken before the proper officer of the district in which the arrest is made, for examination; and if probable cause is not shown, or if (the case being bailable) he gives bail, he is entitled to be discharged. It is only after a commitment upon the results of such an examination, that an order (by the district judge) can be made to remove him to the district in which the trial is to be had.

United States *vs.* Shephard, 1 Abb. U. S. Rep.  
431.

## THE COMPLAINT.

Before the commissioner can properly issue his warrant of arrest, there must first be a complaint, sup-



ported by oath or affirmation, showing probable cause.

United States *vs.* Shephard, 1 Abb. U. S. Rep. 431.

A defendant may be arrested and committed by one magistrate, for a criminal offence, on an affidavit made before another.

*Ex parte* Bollman, 4 Cranch 75 ; United States *vs.* Burr, 1 Burr's Trial, 97 ; Conkling's Treatise, 5th Ed., 598.

But before such affidavit should be received and acted on, its verity ought to be established beyond any reasonable doubt. [*Idem.*]

A certified copy of an information filed for an offence against the United States, without copies of some oath or affirmation to facts showing probable cause to believe the defendant guilty, does not authorize issuing a warrant of arrest.

United States *vs.* Shephard, 1 Abb. U. S. Rep. 431.

The complaint to ground warrant may be in the following form :

## COMPLAINT TO GROUND WARRANT.

——DISTRICT OF——SS.

To A. B., Esq., a commissioner appointed by the circuit court of the United States for the—— district of——to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes :

C. D., of——in the county of——and State of—— on behalf of the United States, on oath, deposes and says that E. F., late of the district aforesaid, heretofore to-wit : on or about the——day of——A.D. 18—, at, etc., did (*here insert the ground of complaint, as, "exercise and carry on the business of a retail dealer in liquors, not then and there having paid the special tax, as imposed by the Statutes of the United States;"*) contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Wherefore the said deponent prays that the said E. F. may be apprehended, and held to answer to this complaint, and further dealt with, relative to the same, according to law.

And, furthermore, the said deponent prays that G. H., I. J., K. L. and M. N., whom he has reason

to and does believe are material witnesses to the subject matter of this complaint, may be duly summoned to appear and give evidence relative thereto.

(Signed.)

C. D.

——DISTRICT OF——ss.

The above-named——personally appeared before me, and made oath to the truth of the above complaint, by him subscribed, this——day of——A. D. 18—.

—— ——— *U. S. Commissioner as aforesaid.*

#### THE WARRANT.

Section 33 of the Act of 1789, provides that the arrest, etc., of offenders against the laws of the United States may be effected agreeably to the usual mode of process against offenders in the State where such arrest is to be made.

This provision does not limit the power of arrest to cases in which, according to State laws, a person might be arrested, but simply prescribes the mode to be pursued. Whenever, by the laws of the United States, an offender is to be arrested, the process of

arrest employed in the State must be pursued ; but an arrest is positively enjoined for *any* offence against the United States.

1 Bright, p. 90, note E.

The warrant of arrest should be directed by the commissioner to the marshal of his district, and may be in the following form :

#### WARRANT OF ARREST.

-----DISTRICT OF ILLINOIS, ss.

THE UNITED STATES OF AMERICA.

*To the Marshal of the-----District of-----:*

Whereas, C. D., in behalf of the United States, has made complaint on his oath, to me, the undersigned, a commissioner appointed by the circuit court of the United States, within and for the said-----district of-----to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes, charging that E. F., of-----did, on or about the-----day of-----A. D. 18--, at, etc., to-wit: at the district aforesaid [*here insert a description of the offence charged in the complaint,*

*and as nearly in the words of the statute as practicable, as: "exercise and carry on the business of a retail dealer in liquors, not then and there having paid the special tax therefor, as imposed by the statutes of the United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.""]*

Now, therefore, you are hereby commanded, in the name of the United States of America, to apprehend the said E. F., and bring his body forthwith before me, or before some other proper officer, authorized by law to arrest, imprison and bail for crimes and offences against the United States, wherever found in your district, that he may then and there be dealt with according to law for said offence. And have you then and there this writ.

Given under my hand and seal, this——day of  
———A. D. 18——.

A. B., *U. S. Commissioner as aforesaid.*

The warrant must state the name and general character of the offence or offences, the name (or if the name be unknown, that fact should be stated,

and the party described) of the party to be arrested, and, as near as may be, the time and place of the alleged offence.

Exp. Buford, 3 Cranch 447.

#### EXAMINATION AND COMMITMENT.

The prisoner, upon being brought before a magistrate, should be immediately, or as soon as the nature of the case will admit, examined and committed, bailed or discharged. [2 Hall, 120.]

A defendant arrested on a criminal charge may be committed for a further examination, but it should be for a short, fixed period, and not for an indefinite time.

United States *vs.* Worms, 4, Blatchford C. C.  
332.

#### EVIDENCE

Showing probable cause to believe that the accused is guilty, is sufficient to warrant his being committed for trial.

*Ex parte* VanCampen, 2 Benedict, 1419.

The commissioner should not require that proof which would be necessary to convict the person to

be committed on a trial in chief, nor should he even require that which should absolutely convince his own mind of the guilt of the accused; but he ought to require, and he *should* require, that probable cause be shown, *i. e.* a case made out by proof, furnishing good reason to believe that the crime alleged has been committed by the person charged with having committed it.

1 Burr's Trial, 11.

As the action of the commissioner as an examining and committing magistrate is subject to the review of the court on *habeas corpus* and *certiorari* (5 Blatchford C. C. 303, 414), it would be more satisfactory if the minutes of the commissioner were always formally taken, and the testimony of the witness read over to him and subscribed by his own hand. [*Idem*, 303.]

A magistrate may commit on an affidavit (supported by probable cause) taken before another magistrate.

*Ex parte* Bollman, 4 Cranch, 75.

## A WARRANT OF COMMITMENT

Should show that the accused was committed upon proof of probable cause, supported by oath, and should describe the offence for which the commitment was ordered.

The mittimus may be as follows :

(SOUTHERN) DISTRICT OF——ss.

THE UNITED STATES OF AMERICA.

*To the Sheriff or Jailor of——County:*

WHEREAS, E. F., has been charged upon oath before me, the undersigned, a commissioner appointed by the circuit court of the United States for the——district of——, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes, with having committed an offence against the laws of the United States, in this : that on the——day of——A. D. 18—., at [*State the name of the district where the offence was committed,*] the said E. F. did [*describe the offence set forth in the warrant of arrest.*] And after an examination had this day, by me, of the witnesses against the said E. F., it appearing to me that the said offence has been



committed, and that there is probable cause to believe the said E. F. to be guilty of the offence thus charged, and the said E. F., not having offered sufficient bail, as required by me, the said commissioner, in the sum of——dollars, for his appearance at the next term of the——court of the United States, for the——district of——to be holden at the United States court room, in the city of——, on the first [*Monday*] of [*January*] next, to answer for the said offence, was by me then and there ordered to be committed to the common jail of——county, for want of sureties, and until he should be discharged by due course of law.

You are therefore, hereby commanded, in the name and by the authority of the United States of America, to receive the said E. F., and him safely keep, until he shall be delivered by due process of law.

Given under my hand and seal this——day of——  
A. D. 18—.

—— ——— *U. S. Commissioner as aforesaid.*

#### THE RECOGNIZANCE OF THE ACCUSED

To appear in court, and answer to the charge preferred against him before the commissioner, may be as follows:

## RECOGNIZANCE OF THE ACCUSED.

(SOUTHERN) DISTRICT of——ss.

Before me, A. B., a commissioner appointed by the Circuit Court of the United States for said district, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes, personally appeared E. F., G. H. and J. K., and entered into recognizance as follows :

We E. F., as principal, and G. H. and J. K., as sureties, of the county of——and State of——, acknowledge ourselves to owe and be indebted to the United States of America, in the penal sum of——dollars, to be levied of our respective goods and chattels, lands and tenements, subject, however, to the following condition, to-wit :

WHEREAS the said E. F. has been charged on oath, before the said A. B., commissioner as aforesaid, with having committed an offence against the United States, in this, that on the——day of——A. D. 18——at——in the——district of——the said E. F. did [*here set forth the offence as described in the warrant*], and upon said charge being made as aforesaid, the said A. B., commissioner aforesaid, did issue his

warrant in due form of law, for the arrest of the said E. F.

AND WHEREAS, the said E. F., one of the parties above named, has been brought before the said A.B., commissioner as aforesaid, to answer to the said charge, and witnesses have been duly sworn and examined in relation to said charge, in presence of said E. F., and upon such examination, it appearing to the said commissioner that the offence with which the said E. F. stood charged as aforesaid, had been committed, and that there was probable cause to believe the said E. F. to be guilty thereof, and the said offence being bailable by the said commissioner, he did thereupon order the said E. F. to find sufficient bail in the sum of——dollars, for his appearance at the next term of the——court of the United States for the——district of——, to be holden at the city of——, on the first [*Monday*] of [*January*] next, to answer all such matters and things pertaining to said charge as should be objected against him, and that in default of finding such bail, the said E. F. should stand committed for trial.

Now, therefore, if the said E. F. shall personally be and appear before the said——court of the United

States for the said district, at the next term thereof, to be held in the city of——, on the first [*Monday*] of [*January*] next, to answer all such matters and things pertaining to the said charge as shall be objected against him, and abide the order of court, and not depart the said court without leave, and until the charge shall have been duly disposed of, make like appearance at each successive term of said court, then this recognizance to be void, otherwise to remain in full force and virtue.

Witness our hands this——day of——A. D. 18—.

E. F.

G. H.

J. K.

Taken and acknowledged before me, this——day of——A. D. 18—.

A. B., *U. S. Commissioner as aforesaid.*

——DISTRICT OF——ss.

G. H. and J. K., parties to the above recognizance, being duly sworn, depose and say, that they reside at——in the county of——and State of——, and are worth in property situated in the

——district of——, liable to execution,———  
dollars over and above all their debts and liabilities.

G. H.

J. K.

Subscribed and sworn to before me, this——day  
of——A. D. 18——.

A. B., *U. S. Commissioner as aforesaid.*

The commissioner has power to adjourn an examination to another time and place (*United States vs. Rundlett*, 2 Curtis C. C. 41), and may require the accused to give bail for his appearance while his examination is depending.

1 Burr's Trial, 4.

The condition of the recognizance to appear before the commissioner, can be shown to be broken only by calling the cognizor, at the time and place when and where he is bound to answer, and making an entry of his default; it can not be shown by evidence *aliunde*.

*United States vs. Rundlett*, 2 Curtis C. C. 41.

#### WITNESSES.

As already shown, the commissioner has power to compel the attendance of witnesses, and to take

their recognizances to appear and give testimony at the trial.

In no case shall the fees of more than four witnesses be taxed against the United States in the examination of criminal cases before the commissioners of the United States circuit courts, unless their materiality and importance shall first be approved and certified to by the United States district attorney, for the district in which the examination shall take place, subject to revision as in other cases [Act of Aug. 16th, 1856, 11 Stat. at L. 50.]

The certificate of attendance before the commissioner may be as follows:

CERTIFICATE OF ATTENDANCE OF WITNESSES.

(SOUTHERN) DISTRICT OF (ILLINOIS,) ss.

*Before A. B., U. S. Commissioner.*

UNITED STATES,	}	Charge, _____
vs.		
_____	}	_____
		_____

*To the Marshal of the (Southern) District of (Illinois):*

I hereby certify that it appears from an affidavit on file in my office that——attended before me as witness in the above entitled cause on the——day of ——A.D. 18——, and were duly subpoenaed on behalf of the United States. That——reside in—— in the county of——and State of (Illinois), —— miles from the city of [*here state place of examination*], by the traveled route.

Given under my hand and seal, this——day of ——A. D. 18——.



A. B.,

*U. S. Commissioner for the (Southern)  
District of (Illinois.)*

The affidavit of attendance of witnesses may be as follows :

AFFIDAVIT OF ATTENDANCE OF WITNESSES.

(SOUTHERN) DISTRICT OF (ILLINOIS,) ss.

UNITED STATES,	}	Charge, _____
vs.		
_____	}	_____

*Before A. B., U. S. Commissioner.*

——being duly sworn, deposes and says that he attended before the above named commissioner, at

his office in——, on the——day of——A. D. 18—, as a witness in the above entitled suit, and that he was duly subpoenaed on behalf of the United States, and that he resides in——, in——county, and State of (*Illinois*), ——miles from [*place of examination*], by the traveled route.

Subscribed and sworn to before me, this——day of——A. D. 18—.

—— ——— *U. S. Commissioner for the said district.*

## SECTION IX.

### POWERS UNDER THE CIVIL RIGHTS ACTS.

\* \* \* \* And with a view to affording reasonable protection to all persons in their constitutional rights of equality before the law, without distinction of race or color, or previous condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, and to the prompt discharge of the duties of this act, it shall be the duty of the circuit courts of the United States, and the supreme courts of the territories of the United States, from time to



time, to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act; and such commissioners are hereby authorized and required to exercise and discharge all the powers and duties conferred on them by this act, and the same duties with regard to offences created by this act, as they are authorized by law to exercise with regard to other offences against the laws of the United States. [Act of April 9th, 1866, sec. 4, 14 Stat. at L. 27; Act of May 31st, 1870, 16 Stat. 140.]

\* \* \* And the better to enable the said commissioners to execute their duties faithfully and efficiently, in conformity with the constitution of the United States and the requirements of this act, they are hereby authorized and empowered, within their counties respectively, to appoint in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties. [*Idem*, sec. 5; Act of May 31st, 1870, sec. 9, 16 Stat. at L. 142.]

## SECTION X.

## DESERTERS FROM FOREIGN VESSELS.

On application of a consul or vice-consul of any foreign government having a treaty with the United States, stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such government, while in any port of the United States, and on proof, by the exhibition of the register of the vessel, ship's roll or other official document, that the person named belonged, at the time of desertion, to the crew of said vessel, it shall be the duty of any court, judge, justice or other magistrate (or commissioner, Act of Feb. 24th, 1855, 10 Stat. at L. 614), having competent power, to issue warrants to cause the said person to be arrested for examination; and if, on examination, the facts stated are found to be true, the person arrested, not being a citizen of the United States, shall be delivered up to the said consul or vice-consul, to be sent back to the dominions of any such government; or, on the request, and at the expense of the said consul or vice-consul, shall be detained until the consul or vice-consul finds an opportunity to send him back to the dominions of any such

government: *Provided, nevertheless*, that no person shall be detained' more than two months after his arrest; but at the end of that time shall be set at liberty, and shall not be again molested for the same cause: *And provided further*, that if any such deserter shall be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which the case shall be depending, or may be cognizable, shall have pronounced its sentence, and such sentence shall have been carried into effect. [Act of March 2d, 1829, 4 Stat. at L. 359.]

## SECTION XI.

### DISCHARGE OF POOR CONVICTS.

When a poor convict, sentenced by any court of the United States to be imprisoned and pay a fine, or fine and cost, or to pay a fine, or fine and cost, has been confined in prison thirty days, solely for the non-payment of such fine, or fine and cost, such convict may make application in writing to any commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and after notice to the

district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter; and if, on examination, it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil precept for debt by the laws of [*State where oath is administered*]; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." And thereupon such convict shall be discharged, the commissioner giving to the jailor or keeper of the jail a certificate setting forth the facts. [Act of June 1st, 1872, sec. 14, 17 Stat. 197.]

If the convict swears falsely he may be punished for perjury. [*Idem*, sec. 15.]

## SECTION XII.

## EXTRADITION.

In all cases in which there now exists, or hereafter may exist, any treaty or convention for extradition, between the government of the United States and any foreign government, it shall and may be lawful for any of the justices of the supreme court, or judges of the several district courts of the United States, and the judges of the several State courts, and the commissioners authorized so to do by any of the courts of the United States, are hereby severally vested with power, jurisdiction and authority, upon complaint made under oath or affirmation, charging any person found within the limits of any State, district or territory, with having committed, within the jurisdiction of any such foreign government any of the crimes enumerated or provided for by any such treaty or convention, to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge or commissioner, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the

charge under the provisions of the proper treaty or convention, it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the secretary of state, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of said treaty or convention; and it shall be the duty of the said judge or commissioner to issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made. [Act of Aug. 12th, 1848, sec. 1, 9 Stat. 302.]

In every case of complaint as aforesaid, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any such foreign country may have been granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended. [*Ibid*, sec. 2.]

If the commissioner certifies the criminality of

the accused, then the president is to order a surrender, otherwise there is the end, *pro hac vice*, of the duty and the power of the president. Nor can appeal be taken from the decision of the magistrate to any other court, so as to revise that decision. The judge or magistrate in the case acts by special authority under the act of congress; no appeal is given from his decision by the act; and he does not exercise any part of what is technically considered the judicial power of the United States. [6 Opin, 91.]

The magistrate may act with or without the mandate from the president, and examine on oath any persons touching the truth of the charge, and upon such evidence, as, according to the law of the place, would justify the apprehension and commitment for trial of the person accused of the crime to jail, shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until delivered up in pursuance of the requisition of the United States. [*Ibid.*]

## FORM FOR WARRANT OF COMMITMENT.

UNITED STATES OF AMERICA.

(SOUTHERN) DISTRICT OF (NEW YORK,) ss.

*In the matter of (Thomas Kane.)*

This case having been heard before me, on requisition, through (*Anthony Barclay, Esquire, Her Britannic Majesty's Consul at the Port of New York*), that the said (*Kane*) be committed for the purpose of being delivered up as a fugitive from justice, pursuant to the provisions of the treaty made between the United States and (*Great Britain, Aug. 9th, 1842*), I find and adjudge that the evidence produced against the said (*Kane*) is sufficient in law to justify his commitment on the charge of (*assault with intent to commit murder*) had the crime been committed within the United States. Wherefore I order that the said (*Thomas Kane*) be committed, pursuant to the provisions of the said treaty, to abide the order of the President of the United States in the premises.



Given under my hand and seal, at the city of  
(*New York*) this (29th) day of (*June*) A. D. (1852).

(Signed). JOSEPH BRIDGHAM, [L. S.]

*United States Commissioner for the (So.)  
District of (New York.)*

### SECTION XIII.

#### SEARCH WARRANTS.

Section 15 of the Act of July 13th, 1866, (14 Stat. at L. 98), provides "That the judge of any circuit or district court of the United States, or any commissioner thereof may issue a search warrant, authorizing any internal revenue officer to search any premises, if such officer shall make oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of said premises."

### SECTION XIV.

#### SURETY OF THE PEACE.

The judges of the supreme court, and of the several district courts of the United States, and all

judges and justices of the courts\* of the several States, having authority by the laws of the United States to take cognizance of offences against the constitution and laws thereof, (and the commissioners, Act of May 15th, 1862, sec. 8, 12 Stat. at L. 387), shall respectively have the like power and authority to hold to security of the peace and for good behavior, in cases arising under the constitution and laws of the United States, as may or can be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them. [Act of July 16th, 1798, sec. 1, 1 Stat. 609.]

## CHAPTER III.

### ACCOUNTS.

The accounts of commissioners, in cases where the United States are liable for fees, should be made out and verified by the commissioner under oath, examined and certified to by the district judge of the district in which they are appointed, and forwarded to the First Auditor of the Treasury, at Washington. [Act of Aug. 16th, 1856, sec. 1, 11 Stat. 49.]

The commissioners' accounts for services in each fiscal year (ending on 30th of June) are payable only from the appropriation made for that fiscal year (beginning July 1st and ending June 30th) in which the services are performed ; and no accounts should contain fees earned in different fiscal years.

The account may be formed as follows :



Subscribed and sworn before me, this——day of  
——A. D. 18——.

—— ————*Clerk U. S. District Court.*

[Or other officer having authority to administer oath.]

# JUDGE'S CERTIFICATE.

UNITED STATES OF AMERICA, }  
———*District of*——— } ss.

I—— ———, Judge of the United States district court for the——district of——, do hereby certify that I have carefully examined the foregoing bill of —— ———United States commissioner for the——district of——, and find the same correct, and that the services charged therein have been actually and necessarily performed, as therein stated.

## VOUCHER No. 1.

UNITED STATES OF AMERICA,

*To—— ———U. S. Commissioner for the  
District of——, Dr.*

For fees in case of U. S. *vs.* John Doe, (Violation of  
Revenue Law.)

1874.

July 1.	For draw'g affidavit of complaint, 3 folios, 45c.; oath, 10c.; filing, 10c. ....	65
	For capias, \$1 00; entering return, 15c.; filing 10c.; preeipe for sub- pœna, 10c. ....	1 35
	For subpœna, 25c.; entering return, 1 folio, 15c.; filing, 10c. ....	50
July 10.	For recognizance of def't., 5 folios 75c.; acknowledgment, 25c. ....	1 00
	For recognizance of witness, 5 folios 75c.; acknowledgment, 25c. ....	1 00
	For 3 oaths of sureties, 30c.; 3 oaths of attendance of witnesses, 30c..	60
	For certificate to marshal for pay of witnesses, 2 folios. ....	30
	For hearing and deciding case, one day. ....	5 00
		<hr/> \$10 40

*[Proceed in like manner with each case in which fees are claimed, specifying in detail the services rendered (giving the date in the margin) and for which fees are claimed.]*

## FEES.

For administering an oath, ten cents; taking an acknowledgment, twenty-five cents.

For hearing and deciding on criminal charges, five dollars per day for the time necessarily employed.

For attending to a reference in a litigated matter in a civil cause at law, in equity, or in admiralty, in pursuance of an order of court, three dollars per day.

For taking and certifying depositions to file, twenty cents for each folio of one hundred words, and ten cents per folio for each copy of the same furnished to a party on request.

For issuing any warrant, or writ, or any other service, the same compensation as is allowed to clerks for like services. (See "Clerks' Fees," p. 66).

For issuing any warrant under the tenth article of the treaty of the ninth of August, eighteen hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any person charged with any of the crimes or offences set forth in said article, two dollars; and the same sum for any warrant issued under the

provisions of the convention for the surrender of criminals, between the United States and the King of the French, concluded at Washington, on the ninth day of November, eighteen hundred and forty-three ; and for hearing and deciding upon the case of any person charged with any offence or crime, and arrested under the provisions of said treaty, or convention, five dollars per day for the time necessarily employed. [Act of Feb. 26th, 1853, 10 Stat. 167.]

For examination and certificate in proceedings for the discharge of poor convicts, five dollars per day for every day engaged in such examination. [Act of May 31st, 1872, sec. 16, 17 Stat., p. 199.]

For services incident to arrest and examination under Civil Rights Act, ten dollars in each case. [Act of April 9th, 1866, sec. 7, 14 Stat., 27.]

#### CLERK'S FEES.

For issuing and entering every process, commission, summons, capias, execution, warrant, attachment or other writ, except a writ of venire, summons or subpoena for a witness, one dollar.

For filing and entering every declaration, plea or other paper, ten cents.



For administering every oath or affirmation to a witness or other person, except a juror, ten cents.

For entering any return, rule, order, continuance, judgment, decree or recognizance, drawing any bond or making any record, certificate, return or report, for each folio, fifteen cents; and for a copy of any such entry, or of any paper on file, not exceeding one folio, ten cents; and for each additional folio, ten cents.

For making dockets and indexes, and for all other services on the trial or argument of a cause where issue is joined and testimony given, including venire and taxing costs, three dollars.

For making dockets and indexes, and for taxing costs and other services in a cause where issue is joined and no testimony given, including taxing costs, two dollars.

For making dockets and indexes, and for taxing costs and other services in a cause which is dismissed, discontinued, or a judgment or decree is made or rendered therein without issue, one dollar.

In equity and admiralty causes only, the process, pleadings and decree, and such orders and memoranda as may be necessary to show the jurisdiction of the

court and regularity of the proceedings, shall be entered upon the final record ; and, in case of an appeal, copies of the proofs, and of such entries and papers on file as may be necessary on hearing of the appeal, may be certified up to the appellate court.

For affixing the seal of the court to any instrument when required, twenty cents.

For issuing a writ of subpœna, twenty-five cents.

For every search for any particular mortgage, judgment or other lien, fifteen cents.

For traveling from the office of the clerk, where he is required by law to reside, to the place of holding any court required to be held by law, five cents per mile for going, and five for returning, and five dollars per day for his attendance on any such court or courts while actually in session.

For searching the records of the court for judgments, decrees and other instruments, constituting a general lien upon real estate, and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

For receiving, keeping and paying out money, in pursuance of the requirements of any statute or order

of court, one per cent. on the amount so received, kept and paid.

In cases removed by writ of error or appeal, the clerk's fees for making dockets and taxing costs, shall be but one dollar; and the clerks of the district and circuit courts respectively, *ex officio*, shall be, and hereby are, authorized and empowered to administer oaths, take acknowledgments, take and certify affidavits and depositions in the same manner as commissioners, and shall be entitled to the same fees and compensation therefor. [Act of Feb. 26th, 1853, 10 Stat., 163.]

## WITNESSES' FEES.

For each day's attendance in court, or before any officer, pursuant to law, one dollar and fifty cents, and five cents per mile for traveling from his place of residence to said place of trial or hearing, and five cents per mile for returning. When a witness is subpoenaed in more than one cause between the same parties in different suits at the same court, but one travel fee and one per diem compensation shall be allowed for attendance, to be taxed in the first case disposed of,

and per diem only in the other causes, to be taxed from that time in each case, in the order in which they may be disposed of. [Act of Feb. 26th, 1853, 10 Stat., 157.]

# U. S. COMMISSIONER'S MANUAL.

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## SUPPLEMENT.

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The following table of corrections, indicating the latest changes in the times of holding the several Circuit and District Courts, should be consulted in connection with the list printed in the body of the Manual, the reader will then have a correct statement of the Terms as now held in the several districts. November 14th, 1874.

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### ALABAMA.

On page 71, under "Alabama," in first line instead of as there printed, read first Monday in April and second Monday in October; and on same page, in third line from bottom, for "Fourth," read First.

On page 72, under Southern District, Fifth Judicial Circuit, instead of as there printed, read Circuit and District Courts, first Monday in June and fourth Monday in December, at Mobile.

## CALIFORNIA.

On page 73, under "California," in first line, for "first," read second; in second line, for "June," read July; in same line, for "first," read second; in same line, for "October," read December.

## GEORGIA.

On page 76, under "*Southern District, Fifth Judicial Circuit*," in first line, after "April," read at Savannah; in third line, for "Savannah," read Milledgeville.

## ILLINOIS.

On page 77, under "Illinois," in second line, for "third Monday in October," read third Monday in December.

## INDIANA.

On page 78, under "Indiana," in fourth line, for "February," read April; in same line, for "August," read October.

## IOWA.

On same page, under "Iowa," in head line, for "*District*," read "*Circuit*;" in first line, for "Tuesday," read Monday; in second line, for "third Tuesday," read second Monday; in third and fourth line, for "third Tuesdays in January and July," read fourth Mondays in March and September; in fifth line, for "March and September," read January and June.

## MISSOURI.

On page 84, under "Missouri," in first line, for "first," read third; in same line, for "May," read March; in second line, for "November," read September. In same line, for "third," read first; in same line, strike out February.

## NEBRASKA.

On page 85, under "Nebraska," in second line, before "November," insert second Monday of; in second line, after "District Court," instead of as there printed, read first Monday in May and November, at Omaha.

## NEVADA.

On same page, under "Nevada," in first line, for "first," read second; in same line, for "August," read June; in second line, for "December," read October.

## OHIO.

On page 90, under "Ohio," in third line, after "Toledo," insert on the second Tuesday of June and December.

## OREGON.

On page 91, under "Oregon," in first line, for "first," read second; in same line, for "January," read April; in second line, for "May," read August; in same line, for "September," read November.

## TEXAS.

On page 95, under "*Western District, Fifth Judicial Circuit*," in second line, after "June," insert, at Austin.

## VERMONT.

On page 96, under "Vermont," after "Terms," instead of as there printed, read, Circuit and District Courts, fourth Tuesday in February, at Burlington; third Tuesday of May, at Windsor, and first Tuesday of October, at Rutland.

## WEST VIRGINIA.

On page 98, under "West Virginia," in third line, for "September," read August.

## / WISCONSIN.

On page 99, under "Wisconsin," in second line, for "first Monday," read second Tuesday.



THE  
CIRCUIT AND DISTRICT COURTS  
OF THE  
UNITED STATES.

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[Except where otherwise specified, the Clerk resides at the place of holding Court.]

ALABAMA.

*Northern district, fifth judicial circuit.*

TERMS.—Third Monday in May and November, at Huntsville.

Clerk district court, Lionel W. Day.

COUNTIES IN THE DISTRICT.

Blount, Calhoun, Cherokee, Cleburne, Colbert, De Kalb, Etowah, Fayette, Franklin, Jackson, Jefferson, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, Saint Clair, Sanford, Walker and Winston.

*Middle district, fifth judicial circuit.*

TERMS.—Fourth Monday in May and November, at Montgomery.

Clerk United States district court, E. C. V. Blake.

## COUNTIES IN THE DISTRICT.

Autauga, Baker, Barbour, Bibb, Bullock, Butler, Chambers, Clay, Coffee, Coosa, Covington, Crenshaw, Dale, Dallas, Elmore, Geneva, Henry, Lee, Lowndes, Macon, Montgomery, Perry, Pike, Randolph, Russell, Shelby, Talladega, Tallapoosa and Tuscaloosa.

*Southern district, fifth judicial circuit.*

TERMS.—Circuit court, second Monday in April, and fourth Monday in December, at Mobile. District court, fourth Monday in April and second Monday after fourth Monday in November, at Mobile.

Clerk United States courts, Nathaniel W. Trimble.

## COUNTIES IN THE DISTRICT.

Baldwin, Choctaw, Clark, Conecuh, Escambia, Greene, Hale, Marengo, Mobile, Monroe, Pickens, Sumter, Washington and Wilcox.

## ARKANSAS.

*Eastern district, eighth judicial circuit.*

TERMS.—Circuit court, second Monday in April, and fourth Monday in October, at Little Rock. District court, first Mondays in April and October, at Little Rock.

Clerk United States courts, Ralph L. Goodrich.

## COUNTIES IN THE DISTRICT.

Newton, Searcy, Van Buren, Pope, Conway, White, Yell, Perry, Saline, Pulaski, Montgomery, Hot Springs, Pike, Clark, Hempstead, Lafayette, Columbia, Ouachita, Dallas, Calhoun, Union, Grant, Prairie, Jefferson, Bradley, Ashley, Drew, Chicot, Desha, Arkansaw, Lincoln, Nevada, Dorsey, Faulkner, Garland and Lonoke.

*Western District, eighth judicial circuit.*

TERMS.—District court (having circuit court powers), second Mondays in May and November, at Fort Smith ; second Mondays in March and September, at Helena.

Clerks United States Courts, James O. Churchill, Fort Smith ; W. A. E. Tisdale, DeVall's Bluff.

## COUNTIES IN THE DISTRICT.

The entire Indian Territory, and Phillips, Mississippi, Crittenden, Monroe, Woodruff, Jackson, Saint Francis, Cross, Poinsett, Craighead, Green, Randolph, Sharp, Lawrence, Izard, Independence, Marion, Fulton, Boone, Carroll, Benton, Madison, Washington, Crawford, Franklin, Johnson, Sebastian, Sarber, Scott, Polk, Sevier, and Little River.

## CALIFORNIA.

*Ninth judicial circuit.*

TERMS.—Circuit court, first Monday in February, second Monday in June, and first Monday in October, at San Francisco ; district court, first Monday in April, second Monday in August, and first Monday in December, at San Francisco.

Clerk United States circuit court, L. S. B. Sawyer ; clerk United States district court, Ed. B. Cotter.

The district comprises the entire State.

## CONNECTICUT.

*Second judicial circuit.*

TERMS.—Circuit court, fourth Tuesday in April at New Haven, and third Tuesday in September at Hartford ; district court, fourth Tuesdays in February,

May, August and November, at Hartford and New Haven alternately.

Clerk United States courts, Loren P. Waldo, Hartford.

The district comprises the entire State.

## DELAWARE.

### *Third judicial circuit.*

TERMS.—Circuit court, third Tuesdays in June and October, at Wilmington; United States district court, second Tuesdays of January, April, June, and September, at Wilmington.

Clerk United States courts, Samuel R. Smith.

The district comprises the entire State—New Castle, Kent and Sussex.

## DISTRICT OF COLUMBIA.

TERMS.—Circuit court, fourth Monday in January, second Monday in May, and third Monday in October; district court, first Mondays in June and December, at Washington; criminal court, first Mondays in March and December, and third Monday in June, at Washington.

Clerk district, circuit and criminal courts, R. J. Meigs.

District of Columbia—Washington City, Georgetown, &c.

## FLORIDA.

*Northern district, fifth judicial circuit.*

TERMS.—District court (having circuit court powers), first Monday in December, at Jacksonville; first Monday in February, at Tallahassee; first Monday in March, at Pensacola.

Clerks United States courts, Josiah E. Townsend, Jacksonville; Charles H. Foster, Tallahassee; M. P. DeRieboo, Pensacola.

## COUNTIES IN THE DISTRICT.

Escambia, Santa Rosa, Walton, Holmes, Washington, Jackson, Calhoun, Franklin, Gadsden, Leon, Wakulla, Jefferson, Madison, Hamilton, Suwannee, Taylor, LaFayette, Columbia, Baker, Bradford, Nassau, Duval, Saint John's, Clay, Putnam, Alachua, Levy, Marion, Sumter, Polk, Hernando, Hillsborough, Orange, Volusia, Brevard, and so much of Manatee county as is north of the forty-second township line.

*Southern District, fifth judicial circuit.*

TERMS —First Mondays in May and November, at Key West.

Clerk United States courts, Eugene O. Locke.

## COUNTIES IN THE DISTRICT.

Monroe, Dade, and parts of Manatee and Brevard.

## GEORGIA.

*Northern district, fifth judicial circuit.*

TERMS.—District court, first Monday in March and September, at Atlanta. Circuit court, second Monday in March and September, at Atlanta.

Clerk United States courts, Alfred E. Buck.

COUNTIES IN THE DISTRICT.

Banks, Bartow, Butts, Campbell, Carroll, Catoosa, Chattooga, Cherokee, Clarke, Clayton, Cobb, Coweta, Dade, Douglas, Dawson, DeKalb, Elbert, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Gordon, Greene, Gwinnett, Habersham, Hall, Haralson, Hart, Heard, Henry, Jackson, Jasper, Lincoln, Lumpkin, Madison, Merriwether, Milton, Morgan, Murray, Newton, Oglethorpe, Paulding, Pickens, Pike, Polk, Rabun, Rockdale, Spalding, Taliaferro, Towns, Troop, Union, Walker, Walton, White, Whitfield and Wilkes.

*Southern district, fifth judicial circuit.*

TERMS.—Circuit court, second Monday in April, and Thursday after first Monday in November, at Savannah. District court, second Tuesdays in February, May, August and November, at Savannah.

Clerk United States courts. James McPherson.

COUNTIES IN THE DISTRICT.

Appling, Baker, Baldwin, Berrien, Bibb, Brooks, Bryan, Bullock, Burke, Calhoun, Camden, Chatham, Chattahoochee, Charlton, Clay, Clinch, Coffee, Columbia, Colquitt, Crawford, Decatur, Dodge, Dooley, Dougherty, Early, Echols, Effingham, Emanuel, Glascock, Glynn, Hancock, Harris, Houston, Irwin, Jefferson, Johnson, Jones, Laurens, Lee, Liberty, Lowndes, Macon, Marion, McIntosh, McDuffie, Miller, Mitchell, Monroe, Montgomery, Muscogee, Pierce, Pulaski, Putnam, Quitman, Randolph, Richmond, Schley, Screven, Stewart, Sumter, Talbot, Tatnall, Taylor, Telfair, Terrell, Thomas, Twiggs, Upson,

Ware, Warren, Washington, Wayne, Webster, Wilcox, Wilkinson and Worth.

## ILLINOIS.

*Northern district, seventh judicial circuit.*

TERMS.—First Mondays in March, May, July and October, and third Monday in October, at Chicago.

Clerk United States courts, William H. Bradley.

### COUNTIES IN THE DISTRICT.

Boone, Bureau, Carroll, Cook, DuPage, DeKalb, Grundy, Henderson, Henry, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, McHenry, Marshall, Mercer, Ogle, Peoria, Putnam, Rock Island, Stark, Stephenson, Warren, Whitesides, Will, Winnebago and Woodford.

*Southern district, seventh judicial circuit.*

TERMS.—Circuit and district courts, first Mondays in January and June, at Springfield. Additional terms of the district court, first Mondays in March and October, at Cairo.

Clerk United States circuit court, John A. Jones, Springfield; clerk United States district court, George P. Bowen, Springfield.

### COUNTIES IN THE DISTRICT.

Adams, Alexander, Brown, Bond, Coles, Champaign, Crawford, Clinton, Clark, Calhoun, Christian, Cass, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Fulton, Franklin,

Gallatin, Green, Hamilton, Hancock, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Logan, Moultrie, Macon, Macoupin, Madison, Marion, Mason, Massac, McDonough, McLean, Menard, Monroe, Montgomery, Morgan, Perry, Piatt, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Schuyler, Scott, Shelby, Saint Clair, Tazewell, Union, Vermilion, Wabash, Washington, Wayne, White, and Williamson.

## INDIANA.

### *Seventh judicial circuit.*

TERMS.—Circuit and district courts, first Tuesdays in May and November, at Indianapolis, first Mondays in January and July, at New Albany; and first Mondays in February and August, at Evansville.

Clerk United States courts, John D. Howland, Indianapolis.

The district comprises the entire State.

## IOWA.

### *Eighth judicial District.*

TERMS.—United States circuit court, second Tuesday in May and third Tuesday in October, at Des Moines; United States district court, third Tuesdays in January and July, at Council Bluffs; third Tuesdays in March and September, at Keokuk; third Tuesdays in April and November, at Dubuque; third Tuesdays in May and October, at Des Moines.



Clerk circuit court, George B. Corkhill, Mount Pleasant; clerk district court, Henry K. Love, Dubuque.

The district comprises the entire State.

## KANSAS.

### *Eighth judicial circuit.*

TERMS.—Circuit court, first Monday in June, at Leavenworth; fourth Monday in November, at Topeka. District court, second Monday in April, at Topeka; second Monday in October, at Leavenworth.

Clerk United States courts, A. S. Thomas, Topeka.

The district comprises the entire State.

## KENTUCKY.

### *Sixth judicial circuit.*

TERMS.—Circuit and district courts, first Monday in October and third Monday in February, at Louisville; first Monday in November and second Monday in April, at Paducah; first Monday in December and second Monday in May, at Covington.

Clerks United States courts, W. A. Meriwether, Louisville; Henry Bostwick, Covington; John R. Puryear, Paducah.

The district comprises the entire State.

## LOUISIANA.

*Fifth judicial circuit.*

TERMS.—Circuit court, first Monday in November and fourth Monday in April, at New Orleans. District court, third Mondays in February, May and November, at New Orleans.

Clerk United States circuit court, Francis A. Woolley; clerk United States district court, Charles Claiborne.

The district comprises the entire State.

## MAINE.

*First judicial circuit.*

TERMS.—Circuit court, 23d day of April and September, at Portland. District court, first Tuesdays of February and December, at Portland; first Tuesday of September, at Bath; and fourth Tuesday of June, at Bangor.

Clerk United States circuit court, George F. Emery, Portland; clerk United States district court, William P. Preble, Portland.

The district comprises the entire State.

## MARYLAND.

*Fourth judicial circuit.*

TERMS.—Circuit court, first Mondays in April and November, in Baltimore. District court, first Tuesdays in March, June, September and December, at Baltimore.

Clerk United States courts, James W. Chew.

The district comprises the entire State.

## MASSACHUSETTS.

*First judicial circuit.*

TERMS.—Circuit court, 15th of May and 15th of October, at Boston. District court, third Tuesday in March, fourth Tuesday in June, second Tuesday in September, and first Tuesday in December, at Boston.

Clerk United States circuit court, John G. Stetson; clerk United States district, Edward Dexter.

The district comprises the entire State.

## MICHIGAN.

*Eastern district, sixth judicial circuit.*

TERMS.—United States courts, first Tuesdays in March, June and November, at Detroit.

Clerk United States circuit court. Addison Mandell; clerk United States district court, Darius J. Davidson.

### COUNTIES IN THE DISTRICT.

Branch, Hillsdale, Lenawee, Monroe, Wayne, Washtenaw, Jackson, Calhoun, Ingham, Livingston, Oakland, Macomb, Saint Clair, Lapeer, Genesee,

Shiawassee, Clinton, Gratiot, Saginaw, Tuscola, Sanilac, Huron, Bay, Midland, Isabella, Clare, Gladwin, Roscommon, Ogemaw, Iosca, Alcona, Oscoda, Crawford, Otsego, Montmorency, Alpena, Presque Isle, Cheboygan, Michilimackinac, Chippewa, Schoolcraft, Marquette, Houghton and Ontonagon.

*Western District, sixth judicial circuit.*

TERMS.—Third Mondays in May and October, at Grand Rapids.

Clerk United States courts, Isaac H. Parrish.

#### COUNTIES IN THE DISTRICT.

Allegan, Antrim, Benzie, Berrien, Barry, Cass, Charlevoix, Delta, Eaton, Emmett, Grand Traverse, Ionia, Kent, Kalamazoo, Leelanaw, Lake, Montcalm, Manistee, Mason, Muskegon, Mecosta, Missaukee, Manitou, Menominee, Newaygo, Ottawa, Osceola, Oceana, Saint Joseph, Van Buren and Wexford.

#### MINNESOTA.

*Eighth judicial district.*

TERMS.—Circuit court, third Monday in June and second Monday in December, at St. Paul. District court, first Monday in June, at Winona; and first Monday in October, at St. Paul.

Clerk United States circuit court, Horatio E. Mann, St. Paul; clerk United States district court, William A. Spencer, St. Paul.

The district comprises the entire State

## MISSISSIPPI.

*Northern district, fifth judicial circuit.*

TERMS.—District court, first Mondays in June and December, at Oxford.

Clerk United States courts, George Robert Hill.

## COUNTIES IN THE DISTRICT.

Tishemingo, Alcorn, Prentiss, Itawamba, Lee, Pontotoc, Union, Tippah, Yalabusha, Benton, LaFayette, Calhoun, DeSoto, Tunica, Panola, Coahoma, Bolivar, Sunflower, Tallahatchee, Leflore, Marshall, Grenada, Carroll, Tate, Attala, Monroe, Chickasaw, Lowndes, Oktibbeha, Choctaw, Montgomery, Noxubee and Winston.

*Southern district, fifth judicial circuit.*

TERMS.—Circuit court, first Mondays in May and November, at Jackson. District court, fourth Mondays in June and January, at Jackson.

Clerk United States circuit and district courts, George T. Swann.

## COUNTIES IN THE DISTRICT.

Adams, Amite, Claiborne, Copiah, Covington, Clark, Franklin, Greene, Hancock, Harrison, Hinds, Holmes, Issaquena, Jackson, Jasper, Jefferson, Jones, Kemper, Leake, Lawrence, Lauderdale, Lincoln, Madison, Marion, Newton, Neshoba, Perry, Pike, Rankin, Smith, Simpson, Scott, Washington, Warren, Wayne, Wilkinson and Yazoo.

## MISSOURI.

*Eastern district, eighth judicial circuit.*

TERMS.—Circuit court, first Mondays in May and November; district court, third Mondays in February, May and November, both at St. Louis.

Clerk United States circuit court, Austin Drake; clerk United States district court, Jos. H. Clark.

## COUNTIES IN THE DISTRICT.

Adair, Audrian, Bollinger, Butler, Cape Girardeau, Carter, Clarke, Dunklin, Franklin, Gasconade, Iron, Jefferson, Knox, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, Monroe, New Madrid, Oregon, Pemiscott, Perry, Pike, Ralls, Reynolds, Ripley, Saint Charles, Saint Francis, Saint Louis, Saint Genevieve, Scott, Scotland, Shannon, Schuyler, Shelby, Stoddard, Warren, Wayne and Washington.

*Western district, eighth judicial circuit.*

TERMS.—United States circuit court, third Mondays in April and November, at Jefferson City. District court, first Mondays in March and September, at Jefferson City. Adjourned terms at Saint Joseph and Kansas City.

Clerk United States circuit and district courts, Alfred S. Krekel, Jefferson City.

## COUNTIES IN THE DISTRICT.

Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton,

Cole, Cooper, Crawford, Dade, Dallas, Daviess, De Kalb, Dent, Douglas, Greene, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingston, McDonald, Macon, Maries, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Osage, Ozark, Pettis, Phelps, Platte, Polk, Pulaski, Putnam, Randolph, Ray, Saint Clair, Saline, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth and Wright.

## NEBRASKA.

### *Eighth judicial circuit.*

TERMS.—Circuit court, first Mondays in May and November, at Omaha District court, first Monday in May and first Wednesday after second Tuesday in October, at Omaha.

Clerk United States courts, Watson B. Smith.

The district comprises the entire State.

## NEVADA.

### *Ninth judicial circuit.*

TERMS.—Circuit court, first Monday in March, August, and December. District court, first Mondays February, May and October, both at Carson City.

Clerk United States courts, Rollin Mallory Daggett, Carson City and Virginia.

The district comprises the entire State.

## NEW HAMPSHIRE.

*First judicial circuit.*

TERMS—Circuit court, 8th day of May, at Portsmouth; 8th day of October, at Exeter. District court, third Tuesdays in March and September, at Portsmouth; third Tuesdays of June and December, at Exeter.

Clerk United States circuit court, William H. Hackett, Portsmouth; clerk United States district court, Charles H. Bartlett, Manchester.

The district comprises the entire State.

## NEW JERSEY.

*Third judicial circuit.*

TERMS.—Circuit court, fourth Tuesdays in March and September, at Trenton. District court, third Tuesdays in January, April, June and September, at Trenton.

Clerk United States circuit court, S. D. Oliphant; clerk United States district court, Robert C. Bellville.

The district comprises the entire State.

## NEW YORK.

*Northern district, second judicial circuit.*

TERMS.—Circuit court, third Tuesday in June, at Canandaigua; second Tuesday in October, at Albany;



third Tuesday in January, at Albany; and third Tuesday in March, at Utica. (The last two are adjourned sessions for civil business only.) District court, third Tuesday in January, at Albany; third Tuesday in March, at Utica; second Tuesday in May, at Rochester; third Tuesday in August, at Buffalo; and third Tuesday in November, at Auburn.

Clerk United States circuit court, Charles Mason, Utica; clerk United States district court, Millard P. Fillmore, Buffalo.

#### COUNTIES IN THE DISTRICT.

Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming and Yates.

#### *Southern District, second judicial circuit.*

TERMS —Circuit court, last Monday in February, first Monday in April, and third Monday in October, for the trial of civil causes; on the second Wednesdays in January, March and May, the third Wednesday of June, and the second Wednesdays in October and December, for the trial of criminal causes. District court, first Tuesday in every month, at No. 41 Chambers street, New York City.

Clerk United States circuit court, Kenneth G. White; clerk United States district court, George F. Betts.

## COUNTIES IN THE DISTRICT.

New York, Westchester, Putnam, Dutchess, Columbia, Greene, Ulster, Sullivan, Orange and Rockland.

*Eastern district, second judicial circuit.*

TERMS—United States courts, first Wednesday of every month, at Brooklyn, New York.

Clerk United States courts, Samuel T. Jones.

## COUNTIES IN THE DISTRICT.

Kings, Queens, Suffolk and Richmond, and the waters of the city and county of New York.

## NORTH CAROLINA.

*Eastern district, fourth judicial circuit.*

TERMS.—Circuit court, first Monday in June and last Monday in November, at Raleigh. District court, third Mondays in April and October, at Elizabeth City; fourth Mondays in April and October, at New Berne; and first Mondays after fourth Mondays in April and October, at Wilmington.

Clerk United States circuit court, Nathaniel J. Riddick, Raleigh; clerk United States district court, M. B. Culpepper, Elizabeth City.

## COUNTIES IN THE DISTRICT.

Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecomb, Franklin,

Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Perquimans, Pitt, Robeson, Sampson, Tyrrel, Wake, Warren, Washington, Wayne and Wilson.

*Western district, fourth judicial circuit.*

TERMS.—United States courts, first Mondays in April and October, at Greensboro; third Mondays in April and October, at Statesville; first Mondays in May and November, at Asheville.

Clerks United States courts, E. R. Hampton, Asheville; J. W. Payne, Greensboro; H. C. Cowles, Statesville.

COUNTIES IN THE DISTRICT.

Mecklenburgh, Cabarrus, Stanly, Montgomery, Richmond, Davie, Davidson, Randolph, Guilford, Stokes, Rockingham, Forsyth, Union, Anson, Caswell, Person, Alamance, Orange, Chatham, Moore, Clay, Cherokee, Swain, Macon, Jackson, Graham, Haywood, Transylvania, Henderson, Buncombe, Madison, Yancey, Ashe, Mitchell, Watauga, Alleghany, Caldwell, Burke, McDowell; Rutherford, Polk, Cleveland, Gaston, Lincoln, Catawba, Alexander, Wilkes, Surrey, Iredell, Yadkin and Rowan.

## OHIO.

*Northern district, sixth judicial circuit.*

TERMS.—United States courts, first Tuesdays in January, April and October, at Cleveland. District court, two terms at Toledo, time fixed by judge.

Clerk United States courts, Earl Bill, Cleveland.

## COUNTIES IN THE DISTRICT.

Allen, Ashland, Ashtabula, Auglaize, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Defiance, Delaware, Erie, Fulton, Geauga, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knox, Lake, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Morrow, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Wayne, Williams, Wood and Wyandot.

*Southern district, sixth judicial circuit.*

TERMS.—Circuit and district court, on first Tuesdays of February, April and October, at Cincinnati.

Clerk United States courts, Thomas Ambrose.

## COUNTIES IN THE DISTRICT.

Adams, Athens, Belmont, Brown, Champaign, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Highland, Hocking, Jackson, Lawrence, Licking, Madison, Meigs, Monroe, Mercer, Miami, Morgan, Montgomery, Muskingum, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Vinton, Warren and Washington.

## OREGON.

*Ninth judicial circuit.*

TERMS.—Circuit court, first Mondays in January, May and September, at Portland. District court, first Mondays in March, July and November, at Portland.

Clerk United States courts, Ralph Wilcox.

The district comprises the entire State.

## PENNSYLVANIA.

*Eastern district, third judicial circuit.*

TERMS.—Circuit court, first Mondays in April and October, at Philadelphia. District court, third Mondays in February, May, August and November, at Philadelphia.

Clerk United States circuit court, Samuel Bell, Philadelphia; clerk United States district court, George R. Fox, Norristown.

## COUNTIES IN THE DISTRICT.

Adams, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Franklin, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Perry, Pike, Schuylkill, Wayne, York and Philadelphia.

*Western district, third judicial circuit.*

TERMS.—Circuit court, second Mondays in May and November, at Pittsburgh; third Mondays in June and September, at Williamsport; second Monday in January and third Monday in July, at Erie. District court, first Monday in May and third Monday in October, at Pittsburgh; third Monday in June and first Monday in October, at Williamsport; second Monday in January and third Monday in July, at Erie.

Clerk United States circuit court, H. D. Gamble, Pittsburgh; clerk United States district court, S. C. McCandless, Pittsburgh.

## COUNTIES IN THE DISTRICT.

Allegheny, Armstrong, Beaver, Butler, Blair, Bradford, Bedford, Columbia, Cameron, Clinton, Clearfield, Cambria, Crawford, Centre, Clarion, Elk, Erie, Fulton, Forest, Fayette, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Luzerne, Lycoming, McKean, Mercer, Mifflin, Montour, Northumberland, Potter, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Westmoreland and Wyoming.

## RHODE ISLAND.

*First judicial circuit.*

TERMS.—Circuit court, 15th days of June and November, at Providence. District court, first Tuesdays

in February and August, at Providence; and second Tuesday in May and third Tuesday in October, at Newport.

Clerk United States courts, Henry Pitman, Providence.

The district comprises the entire State.

## SOUTH CAROLINA.

### *Fourth judicial circuit.*

TERMS.—Circuit court, first Monday in April, at Charleston; fourth Monday in November, at Columbia. District court, eastern district of South Carolina, first Mondays in January, May, July and October, at Charleston; western district, first Monday in August, at Greenville.

Clerk United States district court, Daniel Horlbeck, Charleston; clerk United States circuit court, James E. Hagood, Pickens Court-House.

The district comprises the entire State.

## TENNESSEE.

### *Eastern district, sixth judicial circuit.*

TERMS.—United States courts, second Mondays in January and July, at Knoxville.

Clerk United States circuit court, H. M. Aiken; clerk United States district court, Thomas L. Williams.

## COUNTIES IN THE DISTRICT.

Anderson, Bradley, Blount, Bledsoe, Carter, Claiborne, Cumberland, Cocke, Campbell, Greene, Hawkins, Hancock, Hamilton, Hamblin, Jefferson, James, Johnson, Knox, Morgan, Monroe, Meigs, McMinn, Marion, Polk, Rhea, Roane, Sullivan, Sevier, Scott, Union, Loudon, Grainger and Sequatchie.

*Middle district, sixth judicial circuit.*

TERMS.—United States courts, third Mondays in April and October, at Nashville.

Clerk United States courts, Edward R. Campbell.

## COUNTIES IN THE DISTRICT.

Davidson, Bedford, Bell, Cannon, Cheatham, Clay, Coffee, DeKalb, Dickson, Fentress, Franklin, Giles, Grundy, Hickman, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Putnam, Perry, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Williamson and Wilson.

*Western District, sixth judicial circuit.*

TERMS —United States courts, fourth Mondays in May and November, at Memphis.

Clerk United States courts, H. E. Andrews.

## COUNTIES IN THE DISTRICT.

Shelby, Fayette, Hardeman, Madison, Haywood, Tipton, Lauderdale, Dyer, Gibson, Carroll, Benton, Perry, Henry, Makly, Obion and Lake.



## TEXAS.

*Eastern district, fifth judicial circuit.*

TERMS.—District court (having circuit court powers), first Mondays in December and May, at Galveston; first Mondays in March and October, at Brownsville.

Clerk United States district court, Geo. C. Rives, Galveston; clerk United States circuit court, Christopher Dart, Galveston; clerk United States courts at Brownsville, F. J. Parker, Brownsville.

## COUNTIES IN THE DISTRICT.

Newton, Jasper, Jefferson, Orange, Tyler, Polk, Liberty, Galveston, Harris, Montgomery, Austin, Fort Bend, Brazoria, Colorado, Wharton, Matagorda, Lavaca, Jackson, Calhoun, DeWitt, Victoria, Goliad, Refugio, San Patricio, Nueces, Cameron, Starr, Webb, Hidalgo, Hardin, Chambers, San Jacinto, Live Oak, Bee, McMullen, Duval, Encinal, La Salle, Dimmit, Zapata, and the south half of Karnes.

*Western District, fifth judicial circuit.*

TERMS.—District court (having circuit court powers), first Mondays in January and June, fourth Monday in April, and first Monday in November, at Tyler.

Clerk United States circuit and district court, Matthew Hopkins, Austin; clerk United States courts, W. Camp Robards, Tyler.

## COUNTIES IN THE DISTRICT.

Anderson, Angelina, Atascosa, Archer, Bandera, Bastrop, Baylor, Bell, Bexar, Blanco, Basque, Brown, Brazos, Bowie, Burleson, Burnett, Caldwell, Cherokee, Comanche, Collin, Comal, Concho, Clay, Callahan, Coleman, Cook, Corydell, Dallas, Davis, Denton, Eastland, Edwards, Ellis, Erath, El Paso, Falls, Fannin, Fayette, Freestone, Frio, Gillespie, Gonzales, Grayson, Grimes, Guadalupe, Harrison, Hays, Hamilton, Henderson, Hill, Houston, Hardeman, Haskell, Hopkins, Hood, Hunt, Jack, Johnson, Jones, Kaufman, Karnes, Kerr, Kendall, Knox, Kimball, Kinney, Leon, Lamar, Lampasas, Llano, Limestone, Madison, Marion, Mason, McCulloch, McLennan, Medina, Milam, Menard, Montague, Maverick, Nacogdoches, Navarro, Panola, Parker, Palo Pinto, Presidio, Red River, Robertson, Rusk, Runnels, Sabine, San Augustine, San Saba, Shackelford, Smith, Shelby, Stevens, Tarrant, Travis, Titus, Trinity, Taylor, Throckmorton, Upshur, Uvalde, VanZandt, Walker, Washington, Williamson, Wilson, Wichita, Wise, Wilbarger, Wood, Young and Zapata.

## VERMONT.

*Second judicial circuit.*

TERMS.—Circuit court, fourth Tuesday in February, at Burlington; fourth Tuesday of July, at Windsor; and 3d day of October, at Rutland. District court, fourth Tuesday in February, at Burlington; first Monday after fourth Tuesday in July, at Windsor; 3d day of October, at Rutland.

Clerk United States courts, Bradley B. Smalley, Burlington.

The district comprises the entire State.

## VIRGINIA.

*Eastern district, fourth judicial circuit.*

TERMS.—United States courts, first Mondays in April and October, at Richmond; first Mondays in January and July, at Alexandria; and first Mondays in May and November, at Norfolk.

Clerk United States circuit court, Matthew F. Pleasants, Richmond; clerk United States district court, Edward J. Underwood, Alexandria.

### COUNTIES IN THE DISTRICT.

Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpepper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greenville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Matthews, Mecklenburgh, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spottsylvania, Stafford, Surrey, Sussex, Warwick, Westmoreland and York.

*Western district, fourth judicial circuit.*

TERMS.—United States courts, Tuesdays after fourth Mondays of February and August, at Danville; Tuesdays after third Mondays of March and September, at Lynchburg; Tuesday after first Monday of May,

and Tuesday after second Monday of October, at Harrisonburgh; Tuesdays after fourth Mondays of May and October, at Abingdon.

Clerks United States courts, Everett W. Early, Lynchburgh; Charles P. Latham, Danville; Edward S. Watson, Abingdon; W. J. Points, Harrisonburgh.

#### COUNTIES IN THE DISTRICT.

Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Floyd, Franklin, Frederick, Fluvanna, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Patrick, Page, Pulaski, Pittsylvania, Rappahannock, Rockbridge, Rockingham, Roanoke, Russell, Scott, Smyth, Shenandoah, Tazewell, Washington, Wise, Wythe, and Warren.

#### WEST VIRGINIA.

##### *Fourth judicial circuit.*

TERMS.—Circuit court, first Monday in August, at Parkersburgh. District court, 24th days of March and September, at Clarksburgh; 6th days of April and September, at Wheeling; and 19th days of April and September, at Charleston.

Clerk United States circuit court, J. B. Jackson, Parkersburgh; clerk United States district court, J. Y. Moore, Clarksburgh.

The district comprises the entire State.

## WISCONSIN.

*Eastern district, seventh judicial circuit.*

TERMS.—United States courts, first Mondays in January and October, at Milwaukee; and first Monday in July, at Oshkosh.

Clerk United States circuit court, Edward Kurtz, Milwaukee; clerk United States district court, John M. Miller, Milwaukee.

## COUNTIES IN THE DISTRICT.

Milwaukee, Racine, Kenosha, Walworth, Waukesha, Ozaukee, Washington, Marquette, Green Lake, Fond du Lac, Sheboygan, Manitowoc, Calumet, Winnebago, Waushara, Waupaca, Outagamie, Brown, Kewaunee, Door, Shawanaw and Oconto.

*Western District, seventh judicial circuit.*

TERMS.—United States courts, first Monday in June, at Madison; and third Tuesday in September, at LaCrosse. Special term, third Tuesday in February, at Madison.

Clerks United States courts, Frank M. Stewart, Madison; Harvey J. Peck, LaCrosse.

## COUNTIES IN THE DISTRICT.

Ashland, Adams, Buffalo, Burnett, Barron, Bayfield, Columbia, Chippewa, Crawford, Clark, Dane, Dunn, Douglas, Eau Claire, Grant, Green, Iowa, Jackson, Jefferson, Juneau, La Crosse, La Fayette, Monroe, Marathon, Portage, Pierce, Pepin, Polk, Rock, Richland, Sauk, Saint Croix, Trempeleau, Vernon and Wood.

## TERRITORY OF ARIZONA.

TERMS.—Supreme court, one term, second Monday in January. First district court, first Mondays in March and October, at Tucson. Second district court, third Mondays in March and November, at Arizona City. Third district court, third Mondays in June and November, at Prescott; first Mondays in May and September, at Phoenix. Special terms, at judges' option.

Clerk first district court, — — —; clerk second district court, J. W. Dorrington, Yuma; clerk third district court, E. W. Wells, Prescott.

## COUNTIES IN THE DISTRICT.

First district court, Pima county; second district court, Yuma and Mohave counties; third district court, Yavapai and Maricopa counties.

## TERRITORY OF COLORADO.

TERMS.—Supreme court, second Tuesday in February. First district court, first Mondays in April and October, at Denver. Second district court, fourth Tuesday in April, and first Tuesday in October, at Central City. Third district court, first Tuesday in June, and second Tuesday in December, at Pueblo.

Clerk first district court, George H. Mills, Denver; clerk second district court, John R. Cleaveland, Central City; clerk third district court, George A. Bute, Pueblo; clerk supreme court, David W. Crater, Denver.

## COUNTIES IN THE DISTRICT.

First district: Arapahoe, Douglas, Weld, Greenwood, Park Summit and Lake. Second district: Clear Creek, Gilpin, Jefferson, Boulder and Larimer.

Third district: Pueblo, El Paso, Fremont, Bent, Huerfano, Las Animas, Conejos, Costilla and Saguache.

## TERRITORY OF DAKOTA.

TERMS.—Supreme court, first Tuesday in January, at Yankton. First district court, second Tuesdays in February and November, at Vermillion. Second district court, second Tuesdays in April and October, at Yankton. Third district court, second Tuesdays in June and September, at Fargo.

Clerk supreme court, Joseph R. Hanson, Yankton; clerk first district court, Silas W. Kidder, Vermillion; clerk second and third district courts, George I. Foster, Fargo.

### COUNTIES IN THE DISTRICT.

First district: Clay, Union and Lincoln. Second district: Yankton, Bon Homme, Turner, Minnehaha, Buffalo, Hutchinson, Charles Mix and Jayne. Third district: Pembina, Deuel and Brookings.

## TERRITORY OF IDAHO.

TERMS.—Supreme court, first Monday in January, at Boise City. First district court, second Monday in May, and third Monday in October, at Lewiston. Second district court, first Monday in April, and second Monday in November, at Boise City. Third district court, first Monday in July, and fourth Monday in October, at Malade City.

Clerk supreme court, A. L. Richardson, Boise City; clerk first district court, H. Squier, Lewiston; clerk second district court, A. L. Richardson, Boise City; clerk third district court, E. A. Hollister, Malade City.

## COUNTIES IN THE DISTRICT.

First district: Nez Perces, Idaho and Shoshone.  
Second district: Ada, Owyhee, Boise and Alturas.  
Third district: Oneida and Lemhi.

## TERRITORY OF MONTANA.

TERMS.—Supreme court, first Monday in January, and second Monday in August, at Virginia City. United States district courts: first district, first Monday in May, second Monday in July, and third Monday in November, at Virginia City. Second district, second Monday in April, and first Mondays in September and December, at Deer Lodge. Third district, fourth Monday in February, and first Mondays in June and November, at Helena. Territorial courts: first district, first Monday in May, second Monday in July, and third Monday in November, in Madison county, at Virginia City; first Monday in March, and fourth Monday in October, in Gallatin county, at Bozeman; fourth Monday in March, and first Monday in October, in Jefferson county, at Radersburgh. Second district, second Monday in April, and first Mondays in September and December, in Deer Lodge county, at Deer Lodge; fourth Monday in June and second Monday in November, in Missoula county, at Missoula; first Monday in June and second Monday in October, in Beaver Head county, at Bannack. Third district, fourth Monday in February, and first Mondays in June and November, in Lewis and Clarke county, at Helena; second Mondays in May and October, in Meagher county, at Diamond City.

Clerk supreme court, Isaac R. Alden, Virginia City; clerk first district court, Theophilus Muffly, Virginia City; clerk second district court, Orville B. O'Bannon,



Deer Lodge; clerk third district court, Alexander H. Beattie, Helena.

#### COUNTIES IN THE DISTRICT.

First district: Madison, Gallatin, Jefferson and Big Horn, which last county is attached to Gallatin for judicial purposes. Second district: Deer Lodge, Beaver Head and Missoula. Third district: Lewis and Clarke, Meagher, Choteau and Dawson; last two counties attached to Lewis and Clarke county for judicial purposes.

#### TERRITORY OF NEW MEXICO.

TERMS.—Supreme court, first Monday in January of each year, at Santa Fe. First district court, first Monday in February, and second Monday in July, at Santa Fe. Second district court, last Mondays in April and September, at Albuquerque. Third district court, on the Mondays preceding the last Mondays in May and October, at Mesilla.

Clerk U. S. supreme court, — — —; clerk U.S. first district court, M. A. Breeden, Santa Fe; clerk U. S. second district court, Joseph C. Hill, Albuquerque; clerk U. S. third district court, Ira M Bond, Mesilla.

#### COUNTIES IN THE DISTRICT.

First judicial district: Taos, Colfax, Mora, Rio Arriba, San Miguel, Santa Fe and Santa Ana. Second judicial district: Bernalillo, Valencia and Socorro. Third judicial district: Dona Ana, Lincoln and Grant.

#### TERRITORY OF UTAH.

TERMS.—First district, regular terms not designated. Second district, second Mondays in June and September. Third district, second Mondays in March and September.

Clerk supreme court, C. M. Hawley, Salt Lake City; clerk first district court, C. W. Emerson, Salt Lake City; clerk second district court, J. R. Wilkins, Beaver City; clerk third district court, Joseph F. Nounnon, Salt Lake City.

#### COUNTIES IN THE DISTRICT.

First district: Utah, Juab, Millard, Piute, Sevier, San Pete and Wasatch. Second district: Beaver, Iron, Kane and Washington. Third district: Salt Lake, Tooele, Box Elder, Cache, Rich, Neber, Davis, Morgan and Summit.

#### TERRITORY OF WASHINGTON.

TERMS.—Supreme court, second Monday in December, at Olympia. First judicial district, second Monday in May and fourth Monday in September, at Walla Walla; second sub-district, second Monday in June, at Fort Colville, and fourth Monday in October, at Yakima City. Second judicial district: first sub-district, second Monday in July, at Oysterville; second sub-district, second Monday in April and third Monday in October, at Vancouver; third sub-district third Monday in March and second Monday in November, at Olympia. Third judicial district: first sub-district, fourth Mondays in February and November, at Port Townsend; second sub-district, first Mondays in February and August, at Seattle; third sub-district, third Mondays in January and July, at Steilacoom.

Clerk supreme court, Joseph H. Houghton, Olympia; clerks first district court, William H. Andrews, Walla-Walla; Horace M. Benton, Yakima; Park Winans, Fort Colville; clerks second district court, George T. McConnell, Vancouver; Robert Turner,

Oysterville; clerks third district court, Lyman B. Andrews, Seattle; James Seary, Port Townsend; John Saltar, Steilacoom.

#### COUNTIES IN THE DISTRICT.

First judicial district: first sub-district, Walla-Walla; second sub-district, Stevens and Yakima. Second judicial district: first sub-district, Pacific; second sub-district, Waukiakum, Cowlitz, Clarke, Skamania and Klikitat; third sub-district, Thurston, Chehalis, Lewis and Mason. Third judicial district; first sub-district, Whatcom, Island, Jefferson and Clallam; second sub-district, King, Snohomish and Kitsap; third sub-district, Pierce.

#### TERRITORY OF WYOMING.

TERMS.—Supreme Court, first Monday in July, at Cheyenne. First district court, first and third Mondays in March, third Mondays in July and November, and first Monday in September, alternately at Cheyenne and Laramie City. Second district court, first Mondays in January, May and December, and fourth Monday in July, alternately at Rawlins Springs and Evanston. Third district court, first Mondays in June and October, at South Pass City.

Clerk supreme and first district courts, John W. Bruner, Cheyenne; clerk second district court, L. D. Pease, Laramie City; clerk third district court, Jesse Knight, South Pass City.

#### COUNTIES IN THE DISTRICT.

First district, Laramie and Albany; second district, Carbon and Uinta; third district, Sweet Water.

## PREFACE TO PART II.

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It was first intended to make this work exclusively a Manual for United States Commissioners, but so many of these officers being also Clerks of United States Courts, or attorneys practicing therein, it was afterwards decided to include such practical matter as would serve them in the transaction of the duties of their several offices.

E. T. R.

*Springfield, Ills.,*

*October 12th, 1874.*

## PART II.

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### PRACTICE ACT OF JUNE 1, 1872.

FORTY-SECOND CONGRESS, SESSION II, CH. 255, 17 STAT. AT  
L. 196.

#### AN ACT TO FURTHER THE ADMINISTRATION OF JUSTICE.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*  
That whenever, in any suit or proceeding in a circuit court of the United States, being held by a justice of the Supreme Court and the circuit judge or a district judge, or by the circuit judge and a district judge, there shall occur any difference of opinion between the judges as to any matter or thing to be decided, ruled, or ordered by the court, the opinion of the presiding justice or the presiding judge shall prevail, and be considered the opinion of the court for the time being; but when a final judgment, decree or order in such suit or proceeding shall be entered, if said judges shall certify, as it shall be their duty to do if such be the fact, that they differed in opinion as to any question which, under the act of Congress of April twenty-ninth, eighteen hundred and two, might have been reviewed by the Supreme Court on certificate of difference of opinion, then either party may remove said final judgment, decree or order to the Supreme Court, on writ of error or appeal, according to the nature of the case, and subject to the provisions of law applicable to other writs of error or appeals in regard to bail or supersedeas.

SEC. 2. That no judgment, decree or order of a circuit or district court of the United States, in any civil action at law or in equity, rendered after this act shall take effect, shall be reviewed by the Supreme Court of the United States, on writ of error or appeal, unless the writ of error be sued out, or the appeal be taken, within two years after the entry of such judgment, decree or order; and no judgment, decree or order of a district court, rendered after this act shall take effect shall be reviewed by a circuit court of the United States upon like process or appeal, unless the process be sued out, or the appeal be taken within one year after the entry of the judgment, decree or order sought to be reviewed: *Provided*, That where a party entitled to prosecute a writ of error or to take an appeal is an infant, or *non compos mentis*, or imprisoned, such writ of error may be prosecuted, or such appeal may be taken, within the periods above designated after the entry of the judgment, decree or order, exclusive of the term of such disability. The appellate court may affirm, modify or reverse the judgment, decree or order brought before it for review, or may direct such judgment, decree or order to be rendered, or such further proceedings to be had by the inferior court as the justice of the case may require.

SEC. 3. That the Supreme Court may at any time in its discretion, and upon such terms as it may deem just, and where the defect has not injured and the amendment will not prejudice the defendant in error, allow an amendment of a writ of error, where there is a mistake in the teste of the writ, or a seal to the writ is wanting, or where the writ is made returnable on a day other than the day of the commencement of the term next ensuing the issue of the writ, or when the statement of the title of the action or parties thereto in the writ is defective, if the defect can be remedied by reference to the accompanying record, and in all other particulars of form where the defect has not prejudiced, and the amendment will not injure, the defendant in error; and the circuit and district courts of the United States shall possess the like power of amendment of all process returnable to or before them.

SEC. 4. That a bill of exceptions hereafter allowed in any cause shall be deemed sufficiently authenticated if signed by the judge of the court in which the cause was tried, or presiding judge thereof, if more than one judge sat on the trial of the cause, without any seal of court or judge being annexed thereto; and all process issued from the courts of the United States shall bear teste from the day of such issue.

SEC. 5. That the practice, pleadings and forms and modes of proceeding in other than equity and admiralty causes in the circuit and district courts of the United States shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of court to the contrary notwithstanding: *Provided, however,* That nothing herein contained shall alter the rules of evidence under the laws of the United States, and as practiced in the courts thereof.

SEC. 6. That in common law causes in the circuit and district courts of the United States the plaintiff shall be entitled to similar remedies, by attachment or other process against the property of the defendant, which are now provided by the laws of the State in which such court is held, applicable to the courts of such State; and such circuit and district courts may, from time to time, by general rules, adopt such State laws as may be in force in the State in relation to attachments and other process; and the party recovering judgment in such cause shall be entitled to similar remedies upon the same by execution or otherwise, to reach the property of the judgment debtor, as are now provided by the laws of the State within which said circuit or district courts shall be held in like causes, or which shall be adopted by rules as aforesaid: *Provided,* That similar preliminary affidavits or proofs, and similar security as required by such laws, shall be first furnished by the party seeking such attachment or other remedy.

SEC. 7. That whenever notice is given of a motion for an injunction out of a circuit or district court of the United States, the court or judge thereof may, if there appear to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion. Such order may be granted with or without security in the discretion of the court or judge: *Provided*, That no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order, except within the circuit to which he is allotted, and in causes pending in the circuit to which he is allotted, or in such causes at such place outside of the circuit as the parties may in writing stipulate, except in causes where such application cannot be heard by the circuit judge of the circuit, or the district judge of the district.

SEC. 8. That no indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

SEC. 9. That in all criminal causes the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense.

SEC. 10. That on an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the cause as to the other defendants may be tried by another jury.

SEC. 11. That any party or person desiring to have any judgment, decree or order of any district or circuit court reviewed on writ of error or appeal, and to stay proceedings thereon during the pendency of such writ of error or appeal,



may give the security required by law therefor within sixty days after the rendition of such judgment, decree or order, or afterward with the permission of a justice or judge of the said appellate court.

SEC. 12. That in all criminal or penal causes in which judgment or sentence has been or shall be rendered, imposing the payment of a fine or penalty, whether alone or with any other kind of punishment, the said judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced: *Provided*, That where the judgment directs that the defendant shall be imprisoned until the fine or penalty imposed is paid, the issue of execution on the judgment shall not operate to discharge the defendant from imprisonment until the amount of the judgment is collected or otherwise paid.

SEC. 13. That where in any suit in equity, commenced in any court of the United States, to enforce any legal or equitable lien or claim against real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear there-to, it shall be lawful for the court to make an order directing such absent defendant to appear, plead, answer or demur to the complainant's bill at a certain day therein to be designated, which order shall be served on such absent defendant, if practicable, wherever found, or where such personal service is not practicable such order shall be published in such manner as the court shall direct; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court in its discretion, and upon proof of the service of publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had

been served with process within the said district, but said adjudication shall, as regards such absent defendant without appearance, affect his property within such district only.

SEC. 14. That when a poor convict, sentenced by any court of the United States to be imprisoned and pay a fine, or fine and cost, or to pay a fine, or fine and cost, has been confined in prison thirty days, solely for the non-payment of such fine, or fine and cost, such convict may make application in writing to any commissioner of the United States Court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and after notice to the district-attorney of the United States who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter; and if on examination it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil precept for debt by the laws of the State where oath is administered; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." And thereupon such convict shall be discharged, the commissioner giving to the jailer or keeper of the jail a certificate setting forth the facts.

SEC. 15. That if at any time after such discharge of such convict it shall be made to appear that in taking the aforesaid oath he swore falsely, he may be indicted, convicted and punished for perjury, and be liable to the penalties prescribed in section thirteen of an act entitled "An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved March third, A. D. eighteen hundred and twenty-five.

SEC. 16. That the fees of the commissioner for the examination and certificate provided for in this act shall be five dollars per day for every day that he shall be engaged in such examination.

## ACT OF MARCH 3, 1865.

THIRTY-EIGHTH CONGRESS, SESSION II, CH. 86, 13 STAT. AT  
L. 500.

AN ACT REGULATING PROCEEDINGS IN CRIMINAL CASES,  
AND FOR OTHER PURPOSES.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every grand jury impanelled before any district or circuit court of the United States to inquire into and presentment make of public offences against the United States, committed or tryable within the district for which the court is holden, shall consist of not less than sixteen and not exceeding twenty-three persons. If of the persons summoned less than sixteen attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And whenever a challenge to an individual grand juror is allowed, and there are not other jurors in attendance sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose. No indictment shall be found, nor shall any presentment be made, without the concurrence of at least twelve grand jurors. From the persons summoned and accepted as grand jurors, the court shall appoint the foreman, who shall have power to administer oaths and affirmations to witnesses appearing before the grand jury.

SEC. 2. *And be it further enacted,* That when the offense charged be treason or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges. On a trial for any other offence in which the right of peremptory challenge now exists, the defendant shall be entitled to ten and the United States to two (extended to three by act of June 8, 1872, see p. 113) peremptory challenges. All challenges, whether to the array or panel or to individual jurors for cause or favor, shall be tried by the court without the aid of triers.

SEC. 3. *And be it further enacted,* That in every case where any person, convicted of any offense against the United States, shall be sentenced to imprisonment for a period longer than one year, it shall be lawful for the court by which the sentence is passed to order the same to be executed in any State prison or penitentiary within the district or State where such court is held, the use of which prison or penitentiary is allowed by the legislature of such State for such purposes; and the expenses attendant upon the execution of such sentence shall be paid by the United States.

SEC. 4. *And be it further enacted,* That issues of fact in civil cases in any circuit court of the United States may be tried and determined by the court without the intervention of a jury, whenever the parties, or their attorneys of record, file a stipulation in writing with the clerk of the court waiving a jury. The finding of the court upon the facts, which finding may be either general or special, shall have the same effect as the verdict of a jury. The rulings of the court in the *court* [cause] in the progress of the trial, when excepted to at the time, may be reviewed by the Supreme Court of the United States upon a writ of error, or upon appeal, provided the rulings be duly presented by a bill of exceptions. When the finding is special, the review may also extend to the determination of the sufficiency of the facts found to support the judgment.

SEC. 5. *And be it further enacted*, That all acts and parts of acts in conflict with this act be, and the same are hereby repealed.

SEC. 6. *And be it further enacted*, That this act shall take effect on the first day of June, one thousand eight hundred and sixty-five.

## ACT OF JUNE 8, 1872.

FORTY-SECOND CONGRESS, SESSION II., CH. 333, 17 STAT. AT L. 282.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT REGULATING PROCEEDINGS IN CRIMINAL CASES, AND FOR OTHER PURPOSES," APPROVED MARCH THIRD, EIGHTEEN HUNDRED AND SIXTY-FIVE.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section two of the act entitled "An Act regulating proceedings in criminal cases, and for other purposes," be and the same is hereby amended to read as follows:

SEC. 2. That when the offense charged be treason or a capital offence, the defendant shall be entitled to twenty and the United States to five peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to three peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors, for cause or favor, shall be tried by the court without the aid of triers.

# RULES OF THE SUPREME COURT

OF THE

UNITED STATES.

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## I—CLERK.

The clerk of this court shall reside and keep the office at the seat of the national government, and he shall not practice either as an attorney or counselor in this court, or any other court, while he shall continue to be clerk of this court.

The clerk shall not permit any original record or paper to be taken from the supreme court-room, or from the office, without an order from the court.

## II—ATTORNEYS.

It shall be requisite to the admission of attorneys and counselors to practice in this court, that they shall have been such for three years past in the supreme courts of the States to which they respectively belong, and their private and professional character shall appear to be fair.

They shall respectively take the following oath or affirmation, viz.: "I do solemnly swear (or affirm, as the case may be), that I will demean myself, as an attorney and counselor of this court, uprightly, and according to law, and that I will support the constitution of the United States."

## III—PRACTICE.

This court consider the practice of the courts of the King's Bench and of Chancery, in England, as affording outlines for the practice of this court; and they will from time to time make such alteration therein as circumstances may render necessary.

## IV—BILL OF EXCEPTIONS.

Hereafter the judges of the circuit and district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepted; and that such matters of law, and those only, shall be inserted in the bill of exceptions, and allowed by the court.

## V—PROCESS.

All process of this court shall be in the name of the President of the United States.

When process at common law, or in equity, shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney-general of such State.

Process of subpœna, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and if the defendant, on such service of the subpœna, shall not appear at the return day contained therein, the complainant shall be at liberty to proceed *ex parte*.

## VI—MOTIONS.

All motions hereafter made to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

## VII—LAW LIBRARY—CONFERENCE ROOM.

1. During the session of the court, any gentleman of the bar having a cause on the docket, and wishing to use any book or books in the law library, shall be at liberty, upon application to the clerk of this court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. And it shall be the duty of the clerk to keep, in a book for that purpose, a record of all books so delivered, which are to be charged against the party receiving the same. And in case the same shall not be so returned, the party receiving the same shall be responsible for, and pay twice the value thereof; as also one dollar per day for every day's detention beyond the limited time.

2. The clerk shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom by any one, except the judges of the court.

## VIII—RETURN TO WRIT OF ERROR.

1. The clerk of the court to which any writ of error shall be directed, may make return of the same by transmitting a true copy of the record, and of all proceedings in the cause, under his hand and the seal of the court.

2. No cause will hereafter be heard until a complete record, containing in itself, without reference *aliunde*, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

3. Whenever it shall be necessary or proper, in the opinion of the presiding judge of any circuit court, or district court exercising circuit court jurisdiction, that original papers should at any time be inspected in the supreme court, upon appeal,



such presiding judge may make such rule or order for the safe keeping, transporting and return of such original papers, as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of proceedings.

AMENDMENT TO THE 8TH RULE.

[*Promulgated April 28, 1873.*]

That hereafter in all cases brought to this court, by writ of error, or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to, and transmit with the record, a copy of the opinion or opinions filed in the case.

IX—DOCKETING CASES.

In all cases where a writ of error or an appeal shall be brought to this court from any judgment or decree rendered thirty days before the commencement of the term, it shall be the duty of plaintiff in error or appellant, as the case may be, to docket the cause, and file the record thereof with the clerk of this court within the first six days of the term; and if the writ of error or appeal shall be brought from a judgment or decree rendered less than thirty days before the commencement of the term, it shall be the duty of the plaintiffs in error or appellant to docket the cause and file the record thereof with the clerk of this court within the first thirty days of the term; and if the plaintiff in error or appellant shall fail to comply with the rule, the defendant in error or appellee may have the cause docketed and dismissed, upon producing the certificate of the clerk of the court wherein the decree or judgment was rendered, stating the cause, and certifying that such writ of error or appeal has been sued out and allowed.

And in no case shall the plaintiff in error or appellant be entitled to docket the cause and file the record, after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee may, at his option, docket the cause and file a copy of the record with the clerk of this court; and if the case is docketed, and a copy of the record filed with the clerk of this court, by the plaintiff in error or appellant, within the periods of time above limited and prescribed by this rule, or by the defendant in error or appellee, at any time thereafter during the term, the case shall stand for argument at the term.

3. In all cases where the period of thirty days is mentioned in this rule, it shall be extended to sixty days in writs of error or appeals from California, Oregon, Washington, New Mexico, and Utah.

**X—SECURITY FOR COSTS—PRINTING RECORDS—ATTACHMENT FOR COSTS.**

1. In all cases the clerk shall take of the party a bond, with competent security to secure his fees, in the penalty of two hundred dollars, or a deposit to that amount, to be placed in bank, subject to his draft.

2. In all cases the clerk shall have fifteen copies of the record printed for the court; and the cost of printing shall be charged to the government, in the expenses of the court.

3. The clerk will furnish copies to the printer, shall supervise the printing, and shall take care of and distribute the printed copies to the judges, the reporter and the parties, from time to time, as required.

4. In each case the clerk shall charge the parties the legal fees for but one manuscript copy in the case.

5. In all cases the clerk shall deliver a copy of the printed record to each party. And in cases of dismissal, reversal or affirmance with costs, the fees for the said manuscript copy of the record shall be taxed against the party against whom costs are given, and which charge includes the charge for the copy furnished him.

6. In cases of dismissal for want of jurisdiction, each party shall be charged with one half the legal fees for a copy.

7. Upon the clerk's producing satisfactory evidence, by affidavit or acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by them respectively in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties respectively, to compel the payment of said fees.

#### XI—TRANSLATIONS.

Whenever any record transmitted to this court upon a writ or error or appeal, shall contain any document, paper, testimony or other proceeding, in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed, but the case shall be reported to the court by the clerk, and the court will thereupon remand it to the inferior court, in order that a translation may be there supplied and inserted in the record.

#### XII—EVIDENCE.

1. In all cases where further proof is ordered by the court, the depositions which shall be taken shall be by a commission to be issued from this court, or from any circuit court of the United States.

2. In all cases of admiralty and maritime jurisdiction where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any circuit court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories to be filed by the party applying for the commission, and notice to the opposite party, or his agent or attorney, accompanied with a copy of the interrogatories so filed; to file cross-interrogatories within twenty days from the service of such notice: *Provided, however,* that nothing in this rule shall prevent any party from giving oral testimony in open court in cases where, by law, it is admissible.

## XIII—DEEDS, ETC., NOT OBJECTED TO, ETC., ADMITTED, ETC.

In all cases of equity and admiralty jurisdiction heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record, as evidence, unless objection was taken thereto in the court below, and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

## XIV—CERTIORARI.

No *certiorari* for diminution of the record shall be hereafter awarded in any cause, unless a motion therefor shall be made in writing; and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such *certiorari* shall be made at the first term of the entry of the cause; otherwise the same shall not be granted, unless upon special cause shown in court, accounting satisfactorily for the delay.

## XV—DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personality or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the cause shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order, that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the same reversed if it be erroneous: *Provided, however*, that a copy of every such

order shall be printed in some newspaper at the seat of government in which the laws of the United States shall be printed by authority, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

#### XVI—NO APPEARANCE OF PLAINTIFF.

Where there is no appearance for the plaintiff when the case is called for trial, the defendant may have the plaintiff called and dismiss the writ of error, or may open the record and pray for an appearance.

#### XVII—NO APPEARANCE OF DEFENDANT.

Where the defendant fails to appear when the cause shall be called for trial, the Court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the right of the cause.

#### XVIII—NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and no appearance is entered for either party, the case shall be dismissed at the costs of the plaintiff.

#### XIX—NEITHER PARTY READY AT THE SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the costs of the plaintiff, unless sufficient cause is shown for further postponement.

## XX—PRINTED ARGUMENTS.

1. In all cases brought here on appeal, writ of error, or otherwise, the Court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first sixty days of the term; but twenty copies of the arguments, signed by attorneys or counselors of this Court, must be first filed; ten of these copies for the Court, two for the reporter, three to be retained by the Clerk, and the residue for counsel.

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

3. When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument will be received unless it is filed before the oral argument begins, and the Court will proceed to consider and decide the case upon the *ex parte* argument.

[*Promulgated November 16th, 1872.*]

## XXI.—COUNSEL.—ARGUMENTS.—BRIEFS.

SEC. 1. Only two counsel shall be heard for each party on the argument of a cause.

SEC. 2. Two hours on each side shall be allowed to the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side, at their discretion: *Provided, always*, that a fair opening of the case shall be made by the party having the opening and closing arguments.

SEC. 3. The counsel for the plaintiff in error, or appellant, shall file with the clerk of the court, at least six days before

the case is called for argument, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

SEC. 4. This brief shall contain, *in the order here stated*:

I. A concise abstract, or statement of the case, presenting succinctly the questions involved, and the manner in which they are raised.

II. An assignment of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and specifically each error asserted and intended to be urged; and, in cases brought up by appeal, the assignment shall state, as specifically as may be, in what the decree is alleged to be erroneous. If error is assigned to a ruling upon the report of a master, the specification shall state the exception to the report, and the action of the court upon it.

III. A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record, and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

SEC. 5. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused.

SEC. 6. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected.

SEC. 7. Counsel for a defendant in error, or an appellee, shall file with the clerk twenty printed copies of his argument at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff or appellant, except that no assignment of errors is required, and no statement of the case, unless that presented by the plaintiff or appellant is controverted.

SEC. 8. Without such an assignment of errors counsel will not be heard, except at the request of the court, and errors not

assigned according to this rule will be disregarded, though the court, at its option, may notice a plain error not assigned.

SEC. 9. When, according to this rule, a plaintiff in error, or an appellant, is in default, the case may be dismissed on motion; and when a defendant in error, or an appellee, is in default, he will not be heard, except on consent of his adversary, and with request of the court.

SEC. 10. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

#### XXII.—ORDER OF ARGUMENT.

The plaintiff or appellant in this court shall be entitled to open and conclude the case. But when there are cross-appeals, they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

#### XXIII.—INTEREST.

1. In cases where a writ of error is prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied from the date of the judgment below, until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at the rate of 10 per cent., in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in chancery, unless otherwise ordered by this court.



## XXIV.—COSTS.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed for the defendant in error or appellee, as the case may be, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, as the case may be, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, as the case may be, unless otherwise ordered by the court. The costs of the transcript of the record from the court below, shall be a part of such costs.

4. Neither of the foregoing rules shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

## XXV.—OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be delivered over to the clerk to be recorded. And it shall be the duty of the clerk to cause the same to be forthwith recorded, and to deliver the originals, with a transcript of the judgment or decree of the court thereon, to the reporter, as soon as the same shall be recorded.

2. And all the opinions of the court, as far as practicable, shall be recorded during the term, so that the publication of the reports may not be delayed thereby.

XXVI.—CALL OF THE DOCKET.

(See also Rule xxx.)

The court on the second day in each term will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term, in the same order; and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument, the cause shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court. Ten causes only shall be considered as liable to be called on each day during the term, including the one under argument, if the same shall not be concluded on the preceding day. No cause shall be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court. Every cause which shall have been called in its order, and passed, and put at the foot of the docket, shall, if not again reached during the term it was called, be continued to the next term of the court.

XXVII.—MOTION DAY.

The court will not hear arguments on Saturday, (unless for special cause it shall order to the contrary), but will devote that day to the other business of the court; and on Friday in each week, during the sitting of the court, motions in cases not required by the rules of the court to be put on the docket shall be entitled to preference, if such motions shall be made before the court shall have entered on the hearing of a cause upon the docket.

## XXVIII.—ADJOURNMENT.

The court will, at every session, announce at what day it will adjourn, at least ten days before the time which shall be fixed upon; and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

## XXIX.—DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court; or the appellant and appellee in any appeal, shall at any time hereafter, in vacation and out of term time, by their respective attorneys, who are entered as such on the record, sign and file with the clerk an agreement in writing, directing the case to be dismissed, and specifying the terms upon which it is to be dismissed as to costs, and also paying to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party which may request it a copy of the agreement filed; but no mandate or other process is to issue without an order by the court.

## XXX.—WHEN CASES SHALL BE HEARD.

All cases on the calendar, except cases advanced as hereinafter provided, shall be heard when reached in the regular call of the docket, and in the order in which they are entered.

Criminal cases may be advanced, by leave of the court, on motion of either party.

Revenue cases, and cases in which the United States are concerned, which also involve or affect some matter of general public interest, may also, by leave of the court, be advanced on motion of the attorney-general.

Two or more cases, also, involving the same questions, may, by leave of the court, be heard together, but they must be argued as one case.

## XXXI.—APPEARANCE OF COUNSEL.—MOTIONS TO DISMISS.

Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the plaintiff in error or appellant shall be entered, and no motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

## XXXII.—SUPERSEDEAS.—BOND FOR INDEMNITY.

Supersedeas bonds in the circuit courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect and answer all damages and costs, if he fail to make his plea good. Such indemnity, when the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including "just damages for delay," and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages; or, when the property is in the custody of the marshal, under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use or detention of the property, and the costs of the suit and "just damages for delay," and costs and interest on the appeal.

## XXXIII.—WRITS OF ERROR.

In cases where final judgment is rendered more than thirty days before the first day of the next term of this court, the writ of error and citation, if taken before, must be returnable on the first day of said term, and be served before that day; but in cases where judgment is rendered less than thirty days before the first day, the writ of error and citation may be made returnable on the third Monday of the said term, and be served before that day.

RULES OF PRACTICE  
FOR THE  
COURTS OF EQUITY,  
OF THE UNITED STATES.

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JANUARY TERM 1842.

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PRELIMINARY REGULATIONS.

No. 1. The Circuit Courts, as Courts of Equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings; for issuing and returning *mesne* and final process and commissions, and for making and directing all interlocutory motions, orders, rules and other proceedings, preparatory to the hearing of all causes upon their merits.

No. 2. The Clerk's office shall be open, and the Clerk shall be in attendance therein on the first Monday of every month, for the purpose of receiving, entering, entertaining and disposing of all motions, rules, orders, and other proceedings, which are grantable of course and applied for, or had by the parties, or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

No. 3. Any Judge of a Circuit Court, as well in vacation as in term, may, at chambers, or on the rule days, at the Clerk's office, make and direct all such interlocutory orders,

rules, and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner and with the same effect as the Circuit Court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary at the next rule day thereafter, unless some other time is assigned by the Judge for the hearing.

No. 4. All motions, rules, orders, and other proceedings made and directed at chambers, or on rule days at the Clerk's office, whether special or of course, shall be entered by the Clerk in an order book, to be kept at the Clerk's office, on the day when they are made and directed; which book shall be open at all office hours, to the free inspection of the parties in any suit in equity, and their solicitors. And except in cases where personal or other notice is specially required or directed, such entry in the order book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order book, touching any and all the matters in the suits, to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the Judges of the Circuit Court may, by rule, abridge the time for notice of rules, orders, or other proceedings, not requiring personal service on the parties, in their discretion.

No. 5. All motions and applications in the Clerk's office for the issuing of *mesne* process and final process to enforce and execute decrees, for filing bills, answers, pleas, demurrers and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso*; for filing exceptions, and for other proceedings in the Clerk's office, which do not, by the rules hereinafter prescribed, require any allowance or

order of the Court, or of any Judge thereof, shall be deemed motions and applications, grantable of course by the Clerk of the Court. But the same may be suspended, or altered, or rescinded by any Judge of the Court, upon special cause shown.

No. 6. All motions for rules or orders, and other proceedings, which are not grantable of course, or without notice, shall, unless a different time be assigned by a Judge of the Court, be made on a rule day, and entered in the order book, and shall be heard at the rule day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any Judge of the Court *ex parte*, and granted, as if not objected to, or refused, in his discretion.

#### PROCESS.

No. 7. The process of Subpœna shall constitute the proper *mesne* process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and unless otherwise provided in these rules, or specially ordered by the Circuit Court, a writ of attachment, and if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the Court.

No. 8. Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the Circuit Court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land, or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound without further service to take

notice; and upon affidavit of the plaintiff, filed in the Clerk's office, that the same has not been complied with within the prescribed time, the Clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the Court, or of a Judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

No. 9. When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the Clerk of the Court.

No. 10. Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process, as if he were a party to the cause; and every person not being a party in any cause, against whom obedience to any order of the Court may be enforced, shall be liable to the same process for enforcing obedience to such order, as if he were a party in the cause.

#### SERVICE OF PROCESS.

No. 11. No process of subpœna shall issue from the Clerk's office, in any suit in equity, until the bill is filed in the cause.

No. 12. Whenever a bill is filed, the Clerk shall issue the process of subpœna thereon, as of course, upon the application of the plaintiff, which shall be returnable into the Clerk's office the next rule day, or the next rule day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpœna shall be placed a memorandum, that the defendant is to



enter his appearance in the suit in the Clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*. Where there are more than one defendant, a writ of subpœna may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife, defendants, or a joint subpœna against all the defendants.

No. 13. The service of all subpœnas shall be by a delivery of a copy thereof by the officer serving the same, to the defendant personally, or, in case of husband and wife, to the husband personally, or by leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some free white person who is a member or resident in the family.

No. 14. Whenever any subpœna shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpœna, *toties quoties*, against such defendant, if he shall require it, until due service is made.

No. 15. The service of all process, *mesne* and final, shall be by the Marshal of the District, or his Deputy, or by some other person specially appointed by the Court for that purpose, and not otherwise; in the latter case, the person serving the process shall make affidavit thereof.

No. 16. Upon the return of the subpœna, as served and executed upon any defendant, the Clerk shall enter the suit upon his docket as pending in the Court, and shall state the time of the entry.

#### APPEARANCE.

No. 17. The appearance day of the defendant shall be the rule day, to which the subpœna is made returnable, provided he has been served with the process twenty days before that day; otherwise, his appearance day shall be the next rule day succeeding the rule day when the process is returnable.

The appearance of the defendant, either personally or by

his solicitor, shall be entered in the order book on the day thereof by the Clerk.

#### BILLS TAKEN PRO CONFESSO.

No. 18. It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a Judge of the Court upon motion for that purpose, to file his plea, demurrer, or answer to the bill in the Clerk's office, on the rule day next succeeding that of entering his appearance; in default thereof, the plaintiff may, at his election, enter an order (as of course) in the order book, that the bill be taken *pro confesso*; and thereupon the cause shall be proceeded in *ex parte*, and the matter of the bill may be decreed by the Court at the next ensuing term thereof accordingly, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant, to compel an answer; and the defendant shall not, when arrested upon such process, be discharged therefrom, unless, upon filing his answer, or otherwise complying with such order, as the Court or a Judge thereof may direct, as to pleading to, or fully answering the bill, within a period to be fixed by the Court or Judge, and undertaking to speed his cause.

No. 19. When the bill is taken *pro confesso*, the Court may proceed to a decree at the next ensuing term thereof, such decree rendered shall be deemed absolute, unless the Court shall, at the same term, set aside the same, or enlarge the time of filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the Court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the Court shall direct, and submit to such other terms as the Court shall direct, for the purpose of speeding the cause.

## FRAME OF BILLS.

No. 20. Every bill in the introductory part thereof, shall contain the names, places of abode and citizenship, of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows:

"To the Judge of the Circuit Court of the United States for the district of ———, A. B., of ———, and a citizen of the State of ———, brings this his bill against C. D., of ———, and a citizen of the State of ———, and E. F., of ———, and a citizen of the State of ———. And thereupon your orator complains and says, that, etc."

No. 21. The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses, which the defendant is supposed to intend to set up by way of defense to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant, by way of defense or excuse, to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief, to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction or writ of *ne exeat regno*, or any other special order pending the suit, is required, it shall also be specially asked for.

No. 22. If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the Court, or that they cannot be joined without ousting the jurisdiction of the Court as to the other parties.

And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill, if they should come within the jurisdiction.

No. 23. The prayer for process of subpœna in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the Court may take order thereon as justice may require, upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

No. 24. Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part, that upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

No. 25. In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer, shall in no case exceed the sum which is allowed in the State Court of Chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

#### SCANDAL AND IMPERTINENCE IN BILLS.

No. 26. Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, *in hæc verba*, or any other impertinent manner, or any scandalous matter not relevant to the suit. If it does, it may on exceptions be referred to a master by any Judge of the Court for impertinence or scandal, and if so found by him, the matter shall be expunged at the expense of the plaintiff,

and he shall pay to the defendant all his costs in the suit up to that time, unless the Court or a Judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

No. 27. No order shall be made by any Judge for referring any bill, answer or pleading, or other matter or proceeding, depending before the Court for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages, which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report for the same on or before the next succeeding rule day, or the master shall certify that further time is necessary for him to complete the examination.

#### AMENDMENT OF BILLS.

No. 28. The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill in any matters whatsoever, before any copy has been taken out of the Clerk's office, and in any small matters afterwards, such as filling blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point (as he may do of course), after a copy has been so taken, before any answer or plea, or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall without delay furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish in like manner, to the defendant, a copy of the whole

bill as amended, and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

No. 29. After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any Judge of the Court, to amend his bill on or before the next succeeding rule day, upon payment of costs, or without payment of costs, as the Court or a Judge thereof may in his discretion direct. But after replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except on a special order of a Judge of a Court, upon motion or petition, after due notice to the other party, and upon proof by affidavit, that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable dilligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the Judge for speeding the cause.

No. 30. If the plaintiff, so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the Clerk's office, on or before the next succeeding rule day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

#### DEMURRERS AND PLEAS.

No. 31. No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel, that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant, that it is not interposed for delay; and if a plea, that it is true in point of fact.

No. 32. The defendant may, at any time before the bill is taken for confessed, or afterwards with the leave of the Court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue;

but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination, and the facts on which the charge is founded.

No. 33. The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him, as far as in law and equity they ought to avail him.

No. 34. If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the Court shall be satisfied that the defendant had good ground in point of law or fact to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the Court, be reasonably done; in default whereof the bill shall be taken against him, *pro confesso*, and the matter thereof proceeded in and decreed accordingly,

No. 35. If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the Court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

No. 36. No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

No. 37. No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter, as may be covered by such demurer or plea.

No. 38. If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule day, when the same is filed, or on the next succeeding rule day, he shall be deemed to admit the truth and sufficiency thereof and his bill shall be dismissed as of course, unless a Judge of the Court shall allow him further time for the purpose.

#### ANSWERS.

No. 39. The rule, that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defense (not being matters of abatement, or to the character of the parties, or matters of form), in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer and discover upon filing a plea in bar, and an answer in support of such plea, touching the matters set forth in the bill to avoid or repel the the bar or defense. Thus, for example, a *bona fide* purchaser for a valuable consideration, without notice, may set up that defense by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

No. 40. [REPEALED.](See Rule 93.

No. 41. The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, etc.; and the interrogatories, which each defendant is required to answer, shall be specified in a note at the foot of the bill, in the form or to the effect following; that is to say—"The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3, etc.;" and the office copy of the bill



taken by each defendant shall not contain any interrogatories except those which such defendant is required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

AMENDMENT TO 41ST EQUITY RULE.

*(Promulgated May 6th, 1872.)*

If the complainant, in his bill,, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or on any other incidental motion in the cause; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 of the act of Congress of July 2d, 1864.

No. 42. The note at the foot of the bill specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note after the bill is filed, shall be considered and treated as an amendment of the bill.

No. 43. Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words—"To the end therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several inter-

rogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say—

“1. Whether, etc.

“2. Whether, etc.”

44. A defendant shall be at liberty, by answer, to decline answering any interrogatory or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

No. 45. No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the Court or a Judge thereof may in his discretion direct.

No. 46. In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer, on or before the next succeeding rule day after that on which the amendment or amended bill is filed, unless the time is enlarged or otherwise ordered by a Judge of the Court; and upon his default the like proceedings may be had as in cases of omission to put in an answer.

#### PARTIES TO BILLS.

No. 47. In all cases where it shall appear to the Court that persons, who might otherwise be deemed necessary or proper parties to the suit cannot be made parties by reason of their being out of the jurisdiction of the Court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the Court as to the parties before the Court, the Court may, in their discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

No. 48. Where the parties on either side are very numerous, and cannot without manifest inconvenience and oppressive delays in the suit, be all brought before it, the Court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

No. 49. In all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the Court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

No. 50. In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party, where he desires to have the will established against him.

No. 51. In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

No. 52. Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and

the purpose for which the same is so set down shall be notified by an entry, to be made in the Clerk's order book, in the form or to the effect following: (that is to say)—"Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the Court, if it thinks fit, shall be at liberty to dismiss the bill.

No. 53. If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the Court (if it shall think fit), shall be at liberty to make a decree saving the rights of the absent parties.

#### NOMINAL PARTIES TO BILLS.

No. 54. Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party upon service of the subpœna upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer, he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the Court shall otherwise direct.

No. 55. Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion without notice, to such injunction. But special injunction shall be grantable only upon due notice to the other party by the Court in term, or by a

Judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction, either the common injunction, or a special injunction, is awarded in vacation, it shall, unless previously dissolved by the Judge granting the same, continue until the next term of the Court, or until it is dissolved by some other order of the Court.

#### BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

No. 56. Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same; which bill may be filed in the Clerk's office at any time; and upon suggestion of the facts, the proper process of subpœna shall, as of course, be issued by the Clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule day, which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

No. 57. Whenever any suit in equity shall become defective, from any event happening after the filing of the bill (as, for example, by a change of interest in the parties), or for any other reason a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any Judge of the Court, on any rule day, upon proper cause shown, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto, on the next succeeding rule day after the supplemental bill is filed in the Clerk's office, unless some other time shall be assigned by a Judge of the Court.

No. 58. It shall not be necessary in any bill of revivor, or

supplemental bill, to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

#### ANSWERS.

No. 59. Every defendant may swear to his answer before any Justice or Judge of any Court of the United States, or before any Commissioner appointed by any Circuit Court to take testimony or depositions, or before any Master in Chancery appointed by any Circuit Court, or before any Judge of any Court of a State or Territory.

#### AMENDMENT OF ANSWERS.

No. 60. After an answer is put in it may be amended, as of course, in any matter or form, or by filling up a blank, or correcting a date, or reference to a document or other small matter, and be re-sworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defenses, or qualifying or altering the original statements, except by special leave of the Court or of a Judge thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the Court, or the Judge granting the same, may, in his discretion, require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

#### EXCEPTIONS TO ANSWERS.

No. 61. After an answer is filed on any rule day, the plaintiff shall be allowed until the next succeeding rule day to file in the Clerk's office, exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the pur-

pose, upon cause shown to the Court or a Judge thereof; and if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

No. 62. When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had by two or more of the defendants, separately, costs shall not be allowed for such separate answers or other proceedings, unless a master, upon reference to him, shall certify, that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

No. 63. Where exceptions shall be filed to the answer for insufficiency within the period prescribed by these rules, if the defendant shall not submit to the same, and file an amended answer on the next succeeding rule day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule day thereafter, before a Judge of the Court; and shall enter, as of course, in the order book an order for that purpose. And if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient; provided, however, that the Court, or any Judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

No. 64. If, at the hearing, the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto, on the next succeeding rule day, otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the Court, or of a Judge thereof, upon his putting in such answer, and complying with such other terms, as the Court or Judge may direct.

No. 65. If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the Court, or the Judge thereof, at the hearing upon the exceptions.

#### REPLICATION AND ISSUE.

No. 66. Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule day thereafter; and in all cases where the general replication is filed, the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the Court, or a Judge thereof, shall, upon motion for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

#### TESTIMONY, HOW TAKEN.

No. 67. After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the Clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. on all cases the commissioner or commissioners shall be named by the Court, or by a Judge thereof. If the parties shall so agree, the testimony may be taken upon oral interrogatories by the parties or their agents, without filing any written interrogatories.



## AMENDMENT OF THE 67TH CHANCERY RULE.

*(December Term, 1854.)*

*Ordered*, That the 67th rule governing equity practice be so amended as to allow the presiding Judge of any Court exercising jurisdiction, either in term time or vacation, to vest in the Clerk of said Court general power to name commissioners to take testimony in like manner that the Court or Judge thereof can now do by the said 67th rule.

## AMENDMENT TO 67TH RULE IN EQUITY.

*(December Term, 1861.)*

*Ordered*, That the last paragraph in the 67th rule in equity be repealed, and the rule be amended as follows:

Either party may give notice to the other that he desires the evidence to be adduced in the cause, to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the Court, or before an examiner to be specially appointed by the Court, the examiner to be furnished with a copy of the bill, and answer, if any, and such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, and which shall be conducted as near as may be in the mode now used in common-law courts. The depositions taken upon such oral examination shall be taken down in writing by the examiner, in the form of narrative, unless he determines the examination shall be by question and answer in special instances, and when completed shall be read over to the witness and signed by him in the presence of the parties or counsel, or such of them as may attend: *provided*, if the witness shall refuse to sign the said deposition, then the examiner shall sign the same, and the examiner may, upon all examinations, state any special matters to the Court as he shall think fit, and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but

he shall not have power to decide on the competency, materiality, or relevancy of the questions, and the Court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

The compulsory attendance of witnesses, in case of refusal to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practised with respect to witnesses to be produced on examination before an examiner of said Court on written interrogatories.

Notice shall be given by the respective counsel or solicitors, to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original deposition, authenticated by the signature of the examiner, shall be transmitted by him to the Clerk of the Court, to be there filed of record, in the same mode as prescribed in the 30th section of Act of Congress, September 24, 1789.

Testimony may be taken on commission in the usual way by written interrogatories and cross-interrogatories, on motion to the Court in term time, or to a Judge in vacation, for special reasons, satisfactory to the Court or Judge.

#### AMENDMENT TO 67TH RULE IN EQUITY.

*December Term, 1869.*

Where the evidence to be adduced in a cause is to be taken orally, as provided in the order passed at the December term, 1861, amending the 67th General Rule, the Court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defence, and a time thereafter within which the complainant shall take his evidence in reply; and no further

evidence shall be taken in the cause unless by agreement of the parties, or by leave of Court, first obtained on motion, for cause shown.

No. 68. Testimony may also be taken in the cause, after it is at issue by deposition, according to the acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the acts of Congress, if a Court, or a Judge thereof shall, under all the circumstances, deem it reasonable.

No. 69. Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the Court or a Judge thereof shall, upon special cause shown by either party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon return of the commissions and depositions, containing the testimony, into the Clerk's office, publication thereof may be ordered in the Clerk's office by any Judge of the Court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable under all the circumstances. But by consent of the parties, publication of the testimony may at any time pass in the Clerk's office, such consent being in writing, and a copy thereof entered in the order books, or indorsed upon the deposition or testimony.

#### TESTIMONY DE BENE ESSE.

No. 70. After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged or infirm, or going out of the country, or that any one of them is a single witness to a material fact, the Clerk of the Court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners as a Judge of the Court may direct, to take the examination of such witness or witnesses *de bene*

*esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

#### FORM OF THE LAST INTERROGATORY.

No. 71. The last interrogatory in the written interrogatories to take testimony, now commonly in use, shall in the future be altered, and state in substance, thus: "Do you know or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

#### CROSS BILL.

No. 72. Where a defendant in equity files a cross bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto, before the original plaintiff shall be compellable to answer the cross bill. The answer of the original plaintiff to such cross bill may be read and used by the party filing the cross bill, at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

#### REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.

No. 73. Every decree for an account of the personal estate of a testator or intestate, shall contain a direction to the master, to whom it is referred to take the same, to enquire and state to the Court what parts, if any, of such personal estate are outstanding or undisposed of, unless the Court shall otherwise direct.

No. 74. Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance or for whose benefit the reference is made, shall cause the same to be presented to the master for a hearing on or before the next rule day succeeding the time when the refer-

ence is made: if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

No. 75. Upon every such reference, it shall be the duty of the master as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or in his discretion to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay; and either party shall be at liberty to apply to the Court, or a Judge thereof, for an order to the master to speed the proceedings, and to make his report, and to certify to the Court or Judge the reasons for any delay.

No. 76. In the reports made by the master to the Court, no part of any state of facts, charge, affidavit, deposition, examination, or answer, brought in or used before them shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer, shall be identified, specified and referred to, so as to inform the Court what state of facts, charge, affidavit, deposition, examination or answer, were so brought in or used.

No. 77. The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon

his certificate from the Clerk's office, or by deposition according to the acts of Congress, or otherwise as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof, and the rights of the parties.

No. 78. Witnesses, who live within the district, may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the Clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in Court; and if any witness shall refuse to appear, or to give evidence, it shall be deemed a contempt of the Court, which being certified to the Clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the Court or of any Judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the Court. But nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open Court, if the Court shall in its discretion deem it advisable.

No. 79. All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties, who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories in the master's office, or by deposition, as the master shall direct.

No. 80. All affidavits, depositions, and documents, which have been previously made, read, or used in the Court, upon any

proceeding in any cause or matter, may be used before the master.

No. 81. The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories, or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examination shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the Court, if necessary.

No. 82. The Circuit Courts may appoint standing masters in chancery in their respective districts, both the Judges concurring in the appointment; and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case shall be fixed by the Circuit Court in its discretion, having regard to all the circumstances thereof; and the compensation shall be charged upon and borne by such of the parties in the cause as the Court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the Court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if upon notice thereof, he does not pay it within the time prescribed by the Court.

#### EXCEPTIONS TO REPORT OF MASTER.

No. 83. The master, as soon as his report is ready, shall return the same into the Clerk's office, and the day of the return shall be entered by the Clerk in the order book. The parties shall have one month, from the time of filing the report, to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule day after the month is expired. If exceptions are filed, they shall stand for hearing before the Court, if the Court is then in session, or if not then, at the

next sitting of the Court, which shall be held thereafter by adjournment or otherwise.

No. 84. And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled, shall for every exception overruled, pay costs to the other party, and for every exception allowed, shall be entitled to costs—the costs to be fixed in each case by the Court by a standing rule of the Circuit Court.

#### DECREES.

No. 85. Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may at any time before an actual enrollment thereof, be corrected by order of the Court or a Judge thereof, upon petition, without the form or expense of a rehearing.

No. 86. In drawing up decrees and orders, neither the bill nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order, but the decree and order shall begin in substance as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered adjudged, and decreed as follows, viz:” [Here insert the decree or order.]

#### GUARDIANS AND PROCHEIN AMIS.

No. 87. Guardians *ad litem* to defend a suit may be appointed by the Court, or by any Judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves; all infants and other persons so incapable, may sue by their guardians, if any, or by their *prochein ami*, subject, however, to such orders as the Court may direct for the protection of infants and other persons.



## RE-HEARING.

No. 88. Every petition for a re-hearing shall contain the special matter or cause on which such re-hearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. No re-hearing shall be granted after the term at which the final decree of the Court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the Court, in the discretion of the Court.

## FURTHER REGULATIONS.

No. 89. The Circuit Courts (both Judges concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, *mesne* and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

No. 90. In all cases where the rules prescribed by this Court, or by the Circuit Court, do not apply, the practice of the Circuit Court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local convenience of the district where the Court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

No. 91. Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof, make solemn affirmation to the truth of the facts stated by him.

No. 92. These rules shall take effect, and be of force, in all the Circuit Courts of the United States, from and after the first day of August next; but they may be previously adopted by any Circuit Court in its discretion; and when and as soon as these rules shall so take effect, and be of force, the

rules of practice for the Circuit Courts in Equity Suits, promulgated and prescribed by this Court in March, 1822, shall henceforth cease, and be of no further force or effect.

REPEAL OF THE FORTIETH RULE.

*December Term, 1850.*

No. 93. *Ordered*, That the fortieth Rule heretofore adopted and promulgated by this Court as one of the rules of practice in suits in equity in the Circuit Courts, be, and the same is hereby repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

EXECUTION IN FORECLOSURE.

*December Term, 1863.*

No. 94. In suits in equity for the foreclosure of mortgages in the Circuit Courts of the United States; or in any Court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the eighth Rule of this Court regulating the equity practice, where the decree is solely for the payment of money.

RULES OF PRACTICE  
FOR THE  
COURTS OF THE UNITED STATES  
IN ADMIRALTY,  
ON THE INSTANCE SIDE OF THE COURT.

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DECEMBER TERM, 1844.

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No. 1. No *mesne* process shall issue from the District Courts, in any civil cause of admiralty and maritime jurisdiction, until the libel, or libel of information, shall be filed in the Clerk's office from which such process is to issue. All process shall be served by the Marshal or his Deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the Court.

No. 2. In suits *in personam*, the *mesne* process may be by a simple warrant of arrest of the person of the defendant in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein, that if he cannot be found, to attach his goods and chattels to the amount sued for, or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the gar-

nishees named therein; or by a simple monition in the nature of a summons, to appear and answer to the suit, as the libellant shall, in his libel or information, pray for, or elect.

No. 3. In all suits *in personam*, where a simple warrant of arrest issues and is executed, the Marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the Court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the Court to which the process is returnable or in any appellate Court. And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the Court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate Court.

No. 4. In all suits *in personam*, where goods and chattels, or credits and effects, are attached under such warrant authorizing the same, the attachment may be dissolved by order of the Court to which the same warrant is returnable, upon the defendant, whose property is so attached, giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the Court, and pay the amount awarded by the final decree rendered in the Court to which the process is returnable, or in any appellate Court; and upon such bond or stipulation summary process of execution shall and may be issued against the principal and sureties by the Court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate Court.

No. 5. Bonds, or stipulations in admiralty suits, may be given and taken in open Court, or at chambers, or before any Commissioner of the Court who is authorized by the Court to take affidavits of bail, and depositions in cases pending before the Court.

## AMENDMENT TO FIFTH RULE IN ADMIRALTY.

[*Promulgated May 6, 1872.*]

*Ordered*, That this rule be amended so as to read as follows, viz.:

Bonds, or stipulations in admiralty suits, may be given and taken in open Court, or at chambers, or before any Commissioner of the Court who is authorized by the Court to take affidavits of bail, and depositions in cases pending before the Court; or any Commissioner of the United States authorized by law to take bail and affidavits in civil cases.

No. 6. In all suits *in personam*, where bail is taken, the Court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the Court to be given, upon motion, and due proof thereof.

No. 7. In suits *in personam*, no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the Court, upon affidavit or other proper proof, showing the propriety thereof.

No. 8. In all suits *in rem*, against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances, are in the possession or custody of any third person, the Court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the Marshal, or other proper officer, if upon the hearing, the same is required by law and justice.

No. 9. In all cases of seizure, and in other suits and proceedings *in rem*, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods,

or other thing to be arrested; and the Marshal shall, thereupon, arrest and take the ship, goods, or other thing into his possession for safe custody; and shall cause public notice thereof, and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the District Court shall order; and if there is no newspaper published therein, then in such other public places in the district as the Court shall direct.

No. 10. In all cases where any goods or other things are arrested, if the same are perishable, or liable to deterioration, decay or injury by being detained in custody pending the suit, the Court may, upon the application of either party, in its discretion, order the same, or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy the decree, to be brought into Court to abide the event of the suit; or the Court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisal to be had under its direction, either upon the claimant's depositing in Court so much money as the Court shall order, or upon his giving a stipulation, with sureties in such sums as the Court shall direct, to abide by and pay the money awarded by the final decree rendered by the Court, or the appellate Court if any appeal intervenes, as the one or the other course shall be ordered by the Court.

No. 11. In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him, upon a due appraisal to be had, under the direction of the Court, upon the claimant's depositing in Court so much money as the Court shall order, or upon his giving a stipulation, with sureties as aforesaid; and if the claimant shall decline any such application, then the Court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into Court, or otherwise disposed of, as it may deem most for the benefit of all concerned.

No. 12. In all suits by material men for supplies or repairs, or other necessities, for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight *in rem*, or against the master or the owner alone *in personam*. And the like proceeding *in rem* shall apply to cases of domestic ships, where by the local law, a lien is given to material men for supplies, repairs, or other necessities.

## RULE SUBSTITUTED FOR ABOVE,

(*At December Term, 1858.*)

*Ordered*, That the twelfth rule of practice prescribed by this Court at December term 1844, in causes of admiralty and maritime jurisdiction be, and the same is hereby repealed, and the following rule of practice is substituted in its place.

“In all suits by material men for supplies or repairs, or other necessities, for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*.

And the like proceeding *in personam*, but not *in rem*, shall apply to cases of domestic ships, for supplies, repairs, or other necessities.

This order to take effect, and be in force, from and after the first day of May, 1859.

## AMENDMENT TO THE 12TH RULE IN ADMIRALTY.

(*Promulgated May 6, 1872.*)

*Ordered*, That this rule be amended so as to read as follows:

“In all suits by material men for supplies, or repairs, or other necessities, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*.

No. 13. In all suits for mariners' wages, the libellant may

proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone, *in personam*.

No. 14. In all suits for pilotage, the libellant may proceed against the ship and master, or against the ship, or against the owner alone, or the master alone, *in personam*.

No. 15. In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone, *in personam*.

No. 16. In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

No. 17. In all suits against the ship or freight, founded upon a mere maritime hypothecation, either express or implied, of the master for moneys taken up in a foreign port for supplies or repairs, or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either *in rem* or against the master, or the owner alone *in personam*.

No. 18. In all suits upon bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrong doer.

No. 19. In all suits for salvage, the suit may be *in rem* against the property saved, or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed.

No. 20. In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship or the majority thereof, against the master of a ship for the ascertainment of the title and delivery of the possession, or



for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

No. 21. In all cases where the decree is for the payment of money, the libellant may, at his election, have an attachment to compel the defendant to perform the decree, or a writ of execution, in the nature of a *capias* and of a *fiery facias*, commanding the marshal, or his deputy, to levy the amount thereof of the goods and chattels of the defendant, and for want thereof, to arrest his body to answer the exigency of the execution. In all other cases the decree may be enforced by an attachment to compel the defendant to perform the decree; and upon such attachment, the defendant may be arrested and committed to prison until he performs the decree, or is otherwise discharged by law, or by the order of the Court.

*(Rule Substituted for above at December Term, 1861.)*

*Ordered*, That the twenty-first Rule in admiralty be abolished, and that the following be substituted in its place:

In all cases of a final decree for the payment of money, the libellant shall have a writ of execution in the nature of a *fiery facias*, commanding the marshal or his deputy, to levy and collect the amount thereof, out of the goods and chattels, lands and tenements, or other real estate of the defendant, or stipulators.

No. 22. All informations and libels of informations, upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land, or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is

brought, and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause, at the return day of the process, why the forfeiture should not be decreed.

No. 23. All libels in instance causes, civil or maritime, shall state the nature for the cause, as, for example, that it is a cause civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be, and if the libel be *in rem*, that the property is within the district, and if *in personam*, the names, and occupations, and places of residence of the parties. The libel shall also propound and articulate, in distinct articles, the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights *in rem*, or *in personam* (as the case may require), and for such relief and redress as the Court is competent to give in the premises. And the libellant may further require the defendant to answer on oath, all interrogatories propounded by him, touching all and singular the allegations in the libel, at the close or conclusion thereof.

No. 24. In all informations and libels, in causes of admiralty and maritime jurisdiction, amendments, in matters of form may be made at any time, on motion to the Court, as of course. And new counts may be filed, and amendments, in matters of substance, may be made, upon motion, at any time before the final decree, upon such terms as the Court shall impose. And where any defect of form is set down by the defendant upon special exceptions, and is allowed, the Court may, in granting leave to amend, impose terms upon the libellant.

No. 25. In all cases of libels *in personam*, the Court may, in its discretion, upon the appearance of the defendant, where no bail has been taken and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties in such sum as the Court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order, in the progress of the suit.

No. 26. In suits *in rem*, the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant, by whom or on whose behalf the claim is made, is the true and *bona fide* owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner, or if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner.

And upon putting in such claim, the claimant shall file a stipulation, with sureties, in such sum as the Court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the Court, or upon an appeal by the appellate Court.

No. 27. In all libels in causes of civil and maritime jurisdiction, whether *in rem*, or *in personam*, the answer of the defendant to the allegation in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner each interrogatory propounded at the close of the libel. [*Modified, see Rule No. 49.*]

No. 28. The libellant may except to the sufficiency, or fullness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and if the Court shall adjudge the same exceptions, or any of them, to be good and valid, the Court shall order the defendant forthwith, within

such time as the Court shall direct, to answer the same; and may further order the defendant to pay such costs as the Court shall adjudge reasonable.

No. 29. If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the Court, the Court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the Court shall proceed to hear the cause *ex parte*, and adjudge therein, as to law and justice shall appertain. But the Court may, in its discretion, set aside the default, and upon the application of the defendant, admit him to make answer to the libel, at any time before the final hearing and decree, upon his payment of all the costs of the suit, up to the time of granting leave therefor.

No. 30. In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the Court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken, *pro confesso*, against the defendant to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

No. 31. The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel, which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offence.

No. 32. The defendant shall have a right to require the personal answer of the libellant upon oath or solemn affirmation to any interrogatories which he may, at the close of his answer, propound to the libellant touching any matters charged in the libel, or touching any matter of defense set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution or punishment, or

forfeiture, as is provided in the 31st rule. In default of due answer by the libellant to such interrogatories, the Court may adjudge the libellant to be in default and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject matter of the interrogatory *pro confesso* in favor of the defendant, as the Court, in its discretion, shall deem most fit to promote public justice.

No. 33. Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation, at the proper time, the Court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant, when and as soon as it may be practicable.

No. 34. If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem*, for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which if admitted by the Court, the other party or parties in the suit may be required, by order of the Court, to make due answer; and such further proceedings shall be had, and decree rendered, by the Court therein as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause and to pay all such costs and expenses, and damages, as shall be awarded by the Court upon the final decree, whether it is rendered in the original or appellate Court.

No. 35. Stipulations in admiralty and maritime suits may be taken in open Court, or by the proper Judge at chambers, or under his order, by any Commissioner of the Court who is a standing Commissioner of the Court, and is now by law authorized to take affidavits of bail, and also depositions in civil causes pending in the Courts of the United States.

## SUBSTITUTION TO THE ABOVE RULE.

(*Promulgated May 6, 1872.*)

*Ordered*, That the 35th Rule in Admiralty be abolished, and the following substituted in its stead, viz:

The stipulation required by the last preceding rule, or on appeal, or in any other or maritime proceeding, shall be given and taken in the manner prescribed by Rule fifth, as amended.

No. 36. Exception may be taken to any libel, allegation, or answer, for surplussage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the Court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

No. 37. In cases of foreign attachment, the garnishee shall be required to answer, on oath or solemn affirmation, as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories, touching the same, as may be propounded by the libellant; and if he shall refuse or neglect so to do, the Court may award compulsory process *in personam* against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

No. 38. In cases of mariners' wages, or bottomry, or salvage, or other proceedings *in rem*, where freight or other proceeds or property, are attached to, or are bound by the suit, which are in the hands or possession of any person, the Court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into Court to answer the exigency of the suit, and if no sufficient cause be shown, the Court may order the same to be brought into Court to answer the exigency of the suit, and upon failure of the party to comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

No. 39. If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the Court, he shall be deemed in default in contumacy, and the Court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

No. 40. The Court may, in its discretion, upon the motion of the defendant, and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a re-hearing thereof, at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the Court may direct.

No. 41. All sales of property, under any decree in admiralty, shall be made by the Marshal, or his deputy, or other proper officer assigned by the Court, where the Marshal is a party in interest, in pursuance of the orders of the Court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the Court by the officer making the sale, to be disposed of by the Court according to law.

No. 42. All moneys paid into the registry of the Court shall be deposited in some bank designated by the Court, and shall be so deposited in the name of the Court, and shall not be drawn out except by a check or checks, signed by a Judge of the Court, and countersigned by the Clerk, stating on whose account, and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The Clerk shall keep a regular book containing a memorandum and copy of all the checks so drawn, and the date thereof.

No. 43. Any person having an interest in any proceeds in the registry of the Court, shall have a right, by petition and summary proceeding to intervene *pro interesse suo*, for a delivery thereof to him; and upon due notice to the adverse parties, if any, the Court shall and may proceed summarily to hear and decide thereon, and to decree therein according

to law and justice. And if such petition or claim shall be deserted, or, upon a hearing, be dismissed, the Court may, in its discretion, award costs against the petitioner in favor of the adverse party.

No. 44. In cases where the Court shall deem it expedient or necessary for the purposes of justice, the Court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the Court to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to, or exercised by masters in chancery in references to them, including the power to administer oaths to and examine the parties and witnesses touching the premises.

No. 45. All appeals from the District to the Circuit Court must be made while the Court is sitting, or within such other period as shall be designated by the District Court by its general rules, or by an order specially made in the particular suit.

AMENDMENT TO 45TH RULE IN ADMIRALTY,

*(Promulgated May 6, 1872.)*

*Ordered*, That this rule be amended so as to read as follows, viz:

All appeals from the District to the Circuit Court must be made while the Court is sitting, or within such other period as shall be designated by the District Court by its general rules, or by an order specially made in the particular suit, or in case no such rule or order be made, then within thirty days from the rendering of the decree.

No. 46. In all cases not provided for by the foregoing rules, the District and Circuit Courts are to regulate the practice of the said Courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.



No. 47. These rules shall be in force in all the Circuit and District Courts of the United States from and after the first day of September next.

*It is ordered by the Court*, That the foregoing rules be, and they are, adopted and promulgated as rules for the regulation and government of the practice of the Circuit Courts and District Courts of the United States in suits in admiralty on the instance side of the Courts.

*(December Term, 1850.)*

*Ordered*, That the following Supplemental Rules be added to the Rules heretofore adopted by this Court for regulating proceedings in admiralty:

No. 48. In all suits *in personam*, where a simple warrant of arrest issues, and is executed, bail shall be taken by the marshal and the Court in those cases only in which it is required by the laws of this State; where an arrest is made upon similar or analagous process issuing from the State Courts.

An imprisonment for debt, on process issuing out of the Admiralty Court, is abolished in all cases where, by the laws of the State in which the Court is held, imprisonment for debt has been or shall be hereafter abolished, upon similar or analogous process issuing from a State Court.

No. 49. The 27th Rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the District Court shall be of opinion that the proceedings prescribed by that Rule are necessary for the purposes of justice, in the case before the Court.

All Rules and parts of Rules, heretofore adopted, inconsistent with this order, are hereby repealed and annulled.

*(December Term, 1851.)*

No. 50. *Ordered*, That further proof taken in a Circuit Court upon an admiralty appeal, shall be by deposition, taken

before some commissioner, appointed by Circuit Court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789, upon an oral examination and cross-examination, unless the Court in which such appeal shall be pending, or one of the Judges thereof, shall, upon motion, allow a commission to issue to take such deposition upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken or from the Clerk of the Court in which such appeal shall be pending to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party, or his attorney, allowing time for their attendance after being notified, not less than twenty-four hours, and in addition thereto one day, Sundays exclusive, for every twenty miles' travel: *Provided*, that the Court in which such appeal may be pending, or either of the Judges thereof, may, upon motion, increase or diminish the length of notice above required.

No. 51. *Ordered*, That when oral evidence shall be taken down by the Clerk of the District Court, pursuant to the above mentioned section of the act of Congress, and shall be transmitted to the Circuit Court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

(*December Term, 1854.*)

*Ordered*, That the following Supplemental Rules be added to the Rules heretofore adopted by this Court for regulating proceedings in admiralty:

No. 52. When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be allowed. But within such time after the answer is filed as shall be fixed by the

District Court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain or add to the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

No. 53. The Clerks of the District Courts shall make up the records to be transmitted to the Circuit Courts, on appeals, so that the same shall contain the following:

1. The style of the Court.
2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.
3. If bail was taken, or property was attached or arrested, the process of arrest or attachment and the service thereof, all bail and stipulations, and, if any sale has been made, the orders, warrants, and reports relating thereto.
4. The libel with exhibits annexed thereto.
5. The pleadings of the defendant, with the exhibits annexed thereto.
6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.
7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.
8. Any order of the Court to which exception was made.
9. Any report of an assessor or assessors, if excepted to, with the orders of the Court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.
10. The final decree.
11. The prayer for an appeal, and the action of the District Court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted:

1. The continuances.

2. All motions, rules, and orders not excepted to, which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the District Court was founded on some one or more of these: in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness and to copy the interrogatories and answers, and to state the name of the commissioner and the place where and the date when the deposition was sworn to; and in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

The Clerk of the District Court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the Court, to be a transcript of the record of the District Court in the cause named at the beginning of the copy made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

[*December Term, 1868.*]

No. 54. Whenever a cross bill is filed upon any counter claim arising out of the same cause of action for which the original libel was filed, the respondents in the cross libel shall give security in the usual amount and form, to respond in damages as claimed in said cross libel, unless the Court on cause shown shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given.

SUPPLEMENTARY RULES OF PRACTICE IN ADMIRALTY,  
UNDER THE ACT OF MARCH 3, 1851, ENTITLED "AN ACT  
TO LIMIT THE LIABILITY OF SHIP-OWNERS, AND FOR  
OTHER PURPOSES."

[*Promulgated May 6, 1872.*]

No. 55. When any ship or vessel shall be libelled, or the

owner or owners thereof shall be sued for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability above recited, the said owner or owner shall and may file a libel or petition in the proper District Court of the United States, as hereinafter specified, setting forth the facts and circumstances on which said limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said Court, having caused an appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight for the voyage, shall make an order for the payment of the same into Court, or for the giving of a stipulation with sureties for payment thereof into Court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said Court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight to a trustee to be appointed by the Court under the fourth section of said act; and upon compliance with said order, the said Court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said Court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice served through the post-office, or otherwise, as the Court, in its discretion, may direct; and the said Court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

No. 56. Proof of all claims which shall be presented in pursuance of said monition shall be made before a Commissioner to be designated by the Court, subject to the right of any person interested to question or controvert the same; and, upon the completion of said proofs, the Commissioner shall make report of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into Court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expenses), shall be divided *pro rata* amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

No. 57. In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage, or injury (independently of the limitation of liability claimed under said act), provided that in his or their libel or petition he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the Commissioner under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both.

No. 58. The said libel or petition shall be filed and the said proceedings had in any District Court of the United States in which said ship or vessel may be libelled to answer for any such embezzlement, loss, destruction, damage, or injury; or, if the said ship or vessel be not libelled then in the District Court for any district in which the said owner or owners may be sued in that behalf. If the ship has already been libelled and sold the proceeds shall represent the same for the purposes of these rules.

RULES OF PRACTICE

ADOPTED BY THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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(DECEMBER 12, 1855.)

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I.

Attorneys and Counselors of the Supreme Court of this State may, on motion, be admitted to practice in this Court; and each person thus admitted shall take an oath to support the Constitution of the United States, and faithfully to discharge his duties as an Attorney and Counselor of this Court. Persons admitted to practice in the Circuit Court for the District of Illinois shall be considered as Attorneys and Counselors of this Court.

II.

The practice of this Court shall conform as near as may be to the practice in the Courts of the State.

III.

The same process shall be used in this Court that is used in like cases in the Courts of the State.

## IV.

When a suit is brought by a non-resident, a bond for costs shall be filed with the Clerk before issuing the writ, the signer of the bond to be a resident of this District.

## V.

When, by the laws of the State, the plaintiff would be entitled to bail, he shall be entitled to bail in this Court.

## VI.

When by the laws of the State, the plaintiff would be entitled to an attachment against the property of the defendant, he shall be entitled to an attachment in this Court.

## VII.

In civil cases, when the original process shall be served on the defendant ten days prior to the commencement of the term, and the declaration shall be filed on or before the first day of the term, the plaintiff may take a rule to plead by the opening of the Court, on the third day of the term. (*See Rules XIII and XVI.*)

## VIII.

In the sale of real estate on execution, the Marshal shall give twenty days notice thereof in a newspaper published in the county where the land lies; and if there be no newspaper published in said county, he shall give such notice as the statutes require. (*See Rule XIV.*)

## IX.

Sections three, thirty-six and thirty-seven, of chapter twenty-one, and section thirty-seven, of chapter fifty-seven, of the Revised Statutes of the State, are adopted by this Court.



## X.

In actions of ejectment, the plaintiff may declare for the whole of the premises in controversy, and may recover any part less than the whole, whether undivided or otherwise, if the proof justifies such recovery. The defendant may, by plea or notice in writing, disclaim all right, title and claim to any estate in the whole or any part of the premises described in the declaration, in which case he shall, if the Court so order, recover his costs; but the plaintiff shall have judgment as in cases of default for the whole or part so disclaimed. If no such disclaimer is made, and the plea of not guilty is interposed, it shall not be necessary, on the trial, to prove the possession or claim of the defendant in the premises at the commencement of the action, but the same shall be considered as admitted.

(MARCH 24, 1856.)

## XI.

In the sale of a line of railroad on execution, it shall be sufficient for the Marshal to give twenty days notice of the time and place of sale in a newspaper published in one of the counties through which the road runs.

(JUNE 16, 1857.)

## XII.

In all cases where a witness shall make affidavit, showing that he attended in this Court at the request of either party to the suit, (stating in the affidavit which party made the request,) and also making affidavit conformed in other respects to the practice of this Court, he shall be entitled to fees, as if he had been regularly subpoenaed.

(FEBRUARY 10, 1858.)

## XIII.

All *mesne* process may be made returnable to the first day of any regular term, and if original process is served on the defendant, and the declaration is filed on or before the return day thereof, the plaintiff may at any time after ten days from the service of the process, take a short rule for a plea, and shall be entitled to a trial at the same term, unless cause be shown for a continuance. (*See Rule VII and XVI.*)

(JUNE 9, 1858.)

## XIV.

In the sale of real estate on execution, the Marshal shall give twenty days notice thereof by publication in one of the newspapers published in the City of Springfield, and by sending by mail one copy of such paper, addressed to the defendant at his post office, if such office is known to the Marshal.

(JUNE 12, 1858.)

## XV.

Whenever a judgment shall be rendered, or when a judgment has been heretofore rendered by this Court, and an execution against the property of the defendant or defendants in said judgment shall be returned by the Marshal "No property found," then on the affidavit of the plaintiff, or other credible person, being made before the Clerk of this Court, or before a Commissioner appointed by any of the Courts of the United States, that said defendant or defendants have no property, within the knowledge of said affiant, in his or their possession liable to execution; and that such affiant hath just reason to believe that another person or persons, is or are indebted to such defendant or defendants, or hath, or have any effects or estate of such defendant or defendants in his or their hands, a summons may issue from the Clerk's office of this

Court, to the person or persons supposed to be indebted, or supposed to have any of the effects or estate of the said defendant or defendants, to appear before this Court at the next term thereof after the issuing said writ, and this Court will, upon the return that said summons has been served, examine and proceed against such persons summoned as aforesaid, in the same manner as is required by the Statutes of the State of Illinois against garnishees in original attachments in the Act approved March 3d, A. D. one thousand eight hundred and forty-five.

No proceeding against a garnishee or garnishees summoned under this rule, shall be quashed or set aside, or said garnishee or garnishees discharged, on account of the insufficiency of the original affidavit or summons, if the plaintiff or plaintiffs, or other credible person for him or them, shall cause a legal and sufficient affidavit to be filed or the summons to be amended in such time and manner as this Court shall in its discretion direct; and in the event of the amendment of said affidavit or summons, or both, then the cause shall proceed as if such proceedings had been originally sufficient.

(JANUARY 5, 1859.)

XVI.

During any term of the Court, *mesne* process may be made returnable to any future day of the term, with or without a special order of the Court, and if original process is served on the defendant, and the declaration filed on or before the return day thereof, the plaintiff may at any time after the third day from the return day thereof, and ten days after the service of process, take a short rule for a plea, and shall be entitled to a trial at the same term, unless cause be shown for a continuance. (*See Rules VII and XIII.*)

(JUNE 21, 1859.)

XVII.

On application of the party in any cause, or his attorney,

the Clerk shall make a copy of any bill, declaration or other pleading filed by the adverse party, the costs of which shall be taxed as the general costs of the cause.

(JUNE 23, 1859.)

XVIII.

In all actions or contracts express or implied, where the defendant pleads specially to the declaration, and the plaintiff desires to traverse the plea, he may file a replication *de injuria*, or general replication denying the truth of the plea, the effect of which shall be to put in issue all the material averments in the plea, and under such issue it shall be incumbent on the defendant to prove the material allegations in his plea, notwithstanding the plaintiff may have filed but one replication thereto.

(JUNE 24, 1859.)

XIX.

In all actions upon contracts, express or implied, where there is a judgment by default, the damages may be assessed by the Court or by a jury, as the plaintiff may elect.

(JANUARY 2, 1860.)

XX.

It is ordered that Chapter LXV, of the Revised Statutes, 1845, of this State, entitled "Liens," be adopted as a rule of this Court.

(JANUARY 18, 1860.)

XXI.

*Ordered,* That Section 10, Chapter XL, entitled "Evidence and Depositions," Revised Statutes of Illinois, be adopted as a rule of this Court.

## XXII.

It shall be lawful to take the depositions of witnesses residing in this State, to be read in suits in Chancery, pending in this Court, upon giving to the adverse party or his solicitor ten days' notice of the time and place of taking the same. Such depositions may be taken before a Judge, Justice of the Peace, Clerk of a Court of Record, Notary Public, Master in Chancery, or Commissioner of this Court, and no commission need issue, or interrogatories be filed or served.

## XXIII.

It shall be lawful, upon satisfactory affidavit being filed, to take the depositions of witnesses residing in this State, to be read in suits at law pending in the Courts of the United States for this District, in cases where such witnesses are about to depart from the State, or are confined in jail on legal process, or are unable to attend such Courts on account of advanced age, sickness, or other bodily infirmity, upon giving the adverse party or his attorney ten days' notice of the time and place of taking the same. Such depositions may be taken before a Judge, Justice of the Peace, Clerk of a Court of Record, Notary Public, Master in Chancery, or Commissioner of this Court, and no commission need issue or interrogatories be filed or served.

(FEBRUARY 7, 1860.)

## XXIV.

A suit may be dismissed in vacation on filing with the Clerk a statement to that effect, signed by the plaintiff in person, or by his attorney on the record.

(JUNE 26, 1860.)

## XXV.

*Ordered*, That hereafter all moneys paid into this Court

shall be deposited in the banking house of N. H. Ridgely & Co.

(JUNE 28, 1860.)

XXVI.

Whenever the Court shall continue in session ten days after any decree or judgment shall be rendered, and no motion shall be made or proceeding had to supercede, arrest or set aside the same, the party shall be entitled as of course to his execution upon application to the Clerk, but in cases where other suits are pending against the same defendant or defendants, execution shall not issue (unless for cause shown by affidavit) until the adjournment of the term or the expiration of ten days from the rendition of judgment in all the suits pending against such defendant or defendants.

(JUNE 29, 1860.)

XXVII.

*Ordered*, That in all proceedings upon judgments at law, or decrees in Chancery, in which public notice is required to be given, such notice, when not otherwise specially ordered, shall be published in the *Illinois State Register*.

(OCTOBER 7, 1861.)

*Amendment of Rule No. XXVII.*

It is ordered by the Court that Rule No. twenty-seven, adopted by the Court on the twenty-ninth day of June, A. D. 1860, be amended by adding thereto the words, "or *Illinois State Journal*."

(MARCH 18, 1862.)

*Amendment of Rule No. XXVII.*

It is ordered by the Court that Rule No. twenty-seven, adopted by the Court on the twenty-ninth day of June, A. D.

1860, be further amended by adding thereto the words "or *Union Herald and Everybody's Advertiser*."

(OCTOBER 1, 1860.)

XXVIII.

It is ordered by the Court that no record or paper, after the same has been placed on file, shall be removed from the Clerk's office or Court room without leave of the Court; but this rule is not to apply to the Master in Chancery, or other person to whom a reference may be made, when the use of such paper or record is necessary to the proper discharge of his duties.

(FEBRUARY 25, 1861.)

XXIX.

In actions of ejectment against several defendants, if it appear on the trial that any of defendants occupy distinct parcels of the land in controversy in severalty, or that a part of defendants occupy distinct portions in severalty, and part jointly, the plaintiff, if entitled to recover, may have verdicts and judgments against the defendants for such portions as it appears from the evidence any of defendants hold in severalty, and also against such defendants, as it appears from the evidence occupy jointly any portion of such premises, or against each of such defendants, separately, when it appears by the evidence, that all the defendants hold separately; the costs to be apportioned amongst such defendants as the Court shall, on such trial, order.

(MARCH 7, 1861.)

XXX.

*Ordered*, That whenever a sale of real estate shall have been made, under a judgment obtained in this Court, by the Marshal of this District, and the judgment debtors shall not have redeemed within twelve months from date of said sale,

it shall be lawful for the Marshal to receive the amount of redemption money due on said sale, from any judgment creditor who may have obtained a judgment in any of the Courts of the State of Illinois within the time and in the manner specified in the statutes of said State.

## XXXI.

*Ordered*, That any judgment creditor in this Court shall have the power to redeem from any sale of real estate, made by virtue of any execution issued from, or under any decree made in any of the Circuit County Courts or other Courts of Record of the State of Illinois, against the same judgment debtor, within the Southern District of the State of Illinois, by placing an execution in the hands of the Marshal of this District, by paying the sum necessary to redeem to the judgment creditor in such State Court, or to the proper officer, in the time and manner specified in the statutes of said State, and thereupon the said Marshal shall levy, advertise and sell, and the purchaser of said real estate shall be entitled to a deed, provided no other judgment creditor shall redeem said real estate from the sale so made within the time and manner specified in said statutes. Judgment creditors in the State Courts to have the same right of redemption from sales so made under a redemption as judgment creditors in this Court.

(JANUARY 27, 1863.)

## XXXII.

It is ordered by the Court that the Clerk keep a record in which he shall record all certificates of purchase made by the Marshal or Master in Chancery, upon sales under executions or decrees of this Court, and also all certificates of redemption from such sales, the costs of which shall be taxed in the costs of the cause in which such sale is made.



(JUNE 10, 1863.)

## XXXIII.

It is ordered by the Court that the jurors for this Court be hereafter selected and summoned in the manner following:

The Clerks of the Circuit and District Courts, the Marshal and the Master in Chancery, within ninety days after the adjournment of the present term of this Court, shall furnish a list of five hundred names of competent jurors, with their places of residence, distributed as nearly as practicable, equally throughout the district (having reference to population as well as to territory.) The names of the list so furnished shall be placed on separate tickets prepared by the Clerks, and said tickets placed in a box, from which, in the presence of the District Judge, the Clerks shall draw by lot forty-seven tickets, the names on the first twenty-three of which shall constitute the Grand Jury of the succeeding term, and the names on the remaining twenty-four of the tickets so drawn shall constitute the Petit Jury of the succeeding term; and the Grand and Petit Jurors so selected shall be summoned by the Marshal accordingly. The Clerk shall make an entry upon the record of the jurors so selected, and furnish a list thereof to the Marshal within ten days after such selection is made. The remaining names or tickets in said box shall be preserved, and the list thereof, and at each succeeding term of this Court said list shall, by the officers aforesaid, be revised, for the purpose of ascertaining the names thereon of those who may have died, removed from the District, or become otherwise incompetent, and the names of such, when ascertained, shall be stricken from the list, and the ticket or tickets with such names taken from the box, and the said officers shall thereupon add to said list, and to the tickets in said box such an additional number of new names, selected as aforesaid, as will make the number five hundred, and from the remaining and added tickets, or names in said box, there shall in like manner as before prescribed, within ninety days after each succeeding term of the Court, be drawn a Grand and Petit Jury to serve for

the ensuing term. On the empanelling of the Grand and Petit Jury at each term, if the panel of either shall be incomplete, by reason of the absence of any of the persons selected and summoned as aforesaid, the officers as aforesaid shall supply the deficiency in either Jury by the selection of good and competent men, to serve as talesmen for the term.

(JUNE 23, 1864.)

XXXIV.

From and after this date the admission fee for counselors and attorneys of this Court shall be five dollars.

(JANUARY 7, 1865.)

XXXV.

Declarations and notices in cases in ejectment must be filed, and the rule to plead taken within ten days after the day specified in the notice, or no rule to plead shall be taken thereon, and the service of any declaration in ejectment and notice thereto attached shall be of no effect unless such declarations and notices are filed and rule to plead taken within ten days after the day specified in such notices.

(FEBRUARY 9, 1866.)

XXXVI.

Hereafter no person shall be selected as a juror in this Court who shall directly, or indirectly by himself, or others, make application therefor. And no person who has served, or shall hereafter serve, as a member of the Grand or Petit Jury at any term of this Court, shall be competent to serve as a Petit Juror at any subsequent term held within one year thereafter.

(JUNE 9, 1866.)

XXXVII.

In all civil causes which may be hereafter transferred or cer-

tified into this Court, except by the United States, the Clerk may require a bond for costs before filing the papers and docketing the cause.

(JANUARY 7, 1867.)

XXXVIII.

Hereafter, in every case where the original attorney of record is security for costs, no execution or process shall be issued upon the application of any other person than the original attorney until a new costs bond shall be filed, and thereby the original security for costs shall be discharged from all subsequent costs accruing in said cause.

(JUNE 11, 1869.)

XXXIX.

1. The mode of commencing any action of ejectment shall be by filing with the Clerk of the Circuit Court of the United States for the Southern District of Illinois, a declaration in the form required by the 36th chapter of the Revised Code of the State of Illinois, of 1845, entitled ejectment. Upon filing such declaration a summons shall be issued under the seal of the Court, tested as other writs out of said Court are tested, by act of Congress; dated on the day it shall be issued, and signed by said Clerk, and directed to the Marshal of said Southern District to execute. A bond for costs shall be given as in other cases.

2. The summons, in addition to the usual form, shall contain a description of the premises sued for, and of the estate or interest therein claimed; and the declaration and writ shall be amendable, by leave of Court, prior to entry of judgment by the plaintiff, and shall be served by the delivery of a copy thereof to the defendant, or by leaving a copy at his usual place of abode, with some person who is a member of his family, and of the age of ten years and upwards, at any time before or on the return day thereof. The time of the service

of such summons shall be taken and deemed to be the commencement of such trial.

3. Said cause, when so commenced and summons served, shall stand for trial or be subject to be continued as other actions, under the rules and practice of this Court in other causes; but the plaintiff shall not be entitled to a default until after the expiration of twenty days from the entry of a rule to plead.

(JUNE 14, 1869.)

XL.

*Ordered*, That GEORGE H. HARDACRE, a phonographic reporter, be, and he is hereby appointed official reporter for this Court.

2. When upon the trial of any cause the preservation of the record is desired by the Court, or by either or both parties to such cause, or their attorneys, then by consent of the parties or by order of the Court, it shall be the duty of said official reporter to report and transcribe the evidence in full, and when so transcribed, to file the same among the papers in the cause to be used by the respective parties as the Court shall direct.

3. The fees for so reporting and transcribing the evidence in any cause, shall be estimated by the Master, and paid forthwith by the party in whose behalf the same was ordered, and shall be taxed as costs in the suit. *Provided*, that when the Court shall order the evidence reported upon his own motion, this fee shall be apportioned equally between the parties to the suit, and paid forthwith and taxed as aforesaid, unless otherwise ordered by the Court.

(JULY 12, 1869.)

XLI.

In all suits against railroad companies, process shall be served by reading and delivering a true copy thereof to any of the

following named officers or agents of such company, viz: The president, vice president, secretary, superintendent, assistant superintendent, or any station agent, or general freight or passenger agent.

(JUNE 6, 1871.)

XLI.

Hereafter all moneys paid into the registry of this Court shall be deposited in the First National Bank, Springfield, Illinois.

(JANUARY 25, 1872.)

XLIII.

In all cases taken from the District to the Circuit Court by appeal or writ of error, it shall be the duty of the Clerk to cause to be printed the record as filed in the Circuit Court, the cost of which shall in the first instance be paid by the appellant or plaintiff in error, but which shall be taxed by the Clerk against the losing party; and if briefs or abstracts are furnished, they shall be printed at the cost of the party so furnishing them.

# RULES OF PRACTICE

ADOPTED BY THE

## DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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(JUNE 23, 1860.)

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### I.

*Ordered*, That hereafter all moneys paid into this Court shall be deposited in the banking house of N. H. Ridgely & Co.

### II.

*Ordered*, That in all proceedings in admiralty and upon judgments at law, in which public notice is required to be given, such notice when not otherwise specially ordered, shall be published in the *Illinois State Register*.

— (FEBRUARY 16, 1861.)

### III.

Whereas it is the general practice in this State for juries to be selected by the County Court or County Supervisors, who designate the names of the jurors to be summoned; therefore

with a view to render the selection of juries in this Court as nearly similar to the mode adopted under the laws of the State as may be:

It is ordered by the Court that hereafter, unless specially directed otherwise by the Court, whenever it shall become necessary to summon a Grand or Petit Jury, it shall be the duty of the Commissioners, who may be appointed by the Court for that purpose, to designate the names of twenty-three persons having the qualifications of jurors, for a Grand Jury, and the names of twenty-four persons of like qualifications for a Petit Jury, and the *venire* shall issue directing the Marshal to summon the persons so designated.

It is further ordered by the Court that Antrim Campbell, Elliott B. Herndon and Christopher C. Brown, Esqs., be and they are hereby appointed Commissioners to designate jurors under the foregoing rule, until the further order of this Court.

(JUNE 12, 1863.)

#### IV.

It is ordered by the Court that the jurors for this Court be hereafter selected in manner following:

The Clerks of the Circuit and District Courts, the Marshal and the Master in Chancery, within ninety days after the adjournment of the present term of this Court, shall furnish a list of five hundred names of competent jurors, with their places of residence, distributed as nearly as practicable equally throughout the District; (having reference to population as well as territory.) The names of the list so furnished, shall be placed on separate tickets prepared by the Clerks, and said tickets placed in a box, from which, in the presence of the District Judge, the Clerks shall draw by lot, forty-seven tickets, the names on the first twenty-three of which shall constitute the Grand Jury of the succeeding term, and the names on the remaining twenty-four tickets so drawn, shall constitute the Petit Jury of the succeeding term; and the Grand

and Petit Jurors so selected, shall be summoned by the Marshal accordingly. The Clerk shall make an entry upon the record, of the Jurors so selected, and furnish a list thereof to the Marshal within ten days after such selection is made. The remaining names or tickets in said box shall be preserved, and the list thereof, and at each succeeding term of the Court said list shall, by the officers aforesaid, be revised for the purpose of ascertaining the names thereon of those who may have died, removed from the District, or become otherwise incompetent; and the names of such, when ascertained, shall be stricken from the list, and the ticket or tickets with such names, taken from the box, and the said officers shall thereupon add to said list, and to the tickets in said box, such additional number of new names, selected as aforesaid as will make the number five hundred, and from the remaining and added tickets or names in said box, there shall in like manner as before prescribed, within ninety days after each succeeding term of the Court, be drawn a Grand and Petit Jury to serve for the ensuing term. On the empanelling of the Grand and Petit Jury, at each term, if the panel of either shall be incomplete by reason of the absence of any of the persons selected and summoned as aforesaid, the officers as aforesaid shall supply the deficiency in either Jury by the selection of good and competent men, to serve as talesmen for the term.

(AUGUST 3, 1863.)

V.

The gross proceeds of any sale made by the Marshal under any decree or interlocutory order in admiralty, except in prize cases, shall be paid into the registry of the Court by the Marshal or officer making the sale, and shall thereupon be deposited by the Clerk in the depository of the Court, in the name of the Court, and in the cause in which the sale is made, and no moneys so deposited shall be drawn out except in the manner provided in the forty-second admiralty rule.



## VI.

The gross proceeds of any sale made by the Marshal under any decree or interlocutory order in any prize case in this Court, shall be deposited by the Marshal with the Assistant Treasurer of the United States at St. Louis, subject to the order of the Court, in the case in which the sale is made, and the Marshal shall procure from the Assistant Treasurer, and file in Court, a certificate to that effect; and no moneys so deposited shall be drawn out except in the manner provided in the forty-second admiralty rule.

(SEPTEMBER 7, 1863.)

## VII.

All process in admiralty shall be made returnable to the first Monday in the next month after the date of its issue; *Provided*, That if there be less than fourteen days between the teste of the process and the first Monday of the next month, the process shall be made returnable to the first Monday of the succeeding month.

## VIII.

In all seizures *in rem*, the Marshall shall cause fourteen days' public notice thereof, and of the time assigned for the hearing of the cause, to be given by publication in the newspaper designated by the Court.

## IX.

All writs of *venditioni exponas*, and all other executions in admiralty, unless the Court shall specially order otherwise, shall be made returnable on the first Monday in the next month after the date of the issue thereof; *Provided*, That if there be less than fourteen days between the teste of the writ and the first Monday of the next month, the same shall be made returnable to the first Monday of the succeeding month; and in all sales under writs of *venditioni exponas* or other

executions, unless otherwise ordered, the Marshal shall give ten days' notice thereof by publication in the newspaper designated by the Court.

#### X.

No process *in rem*, or *in personam*, shall be issued, nor shall any appearance or answer be received or third party be permitted to intervene and claim, (except on the part of the United States, or for seamen's wages,) unless a stipulation in the sum of two hundred and fifty dollars shall be first entered into by the party, and at least one surety, resident in the District, conditioned that the principal shall pay all costs awarded against him by this Court, or in case of appeal, by the appellate Court, or unless that sum be paid into the registry of the Court.

#### XI.

The captors of any property brought into this District as prize, or some one in their behalf, shall, without delay, after the arrival of such property within the jurisdiction of the Court, give notice to the District Judge, and also to the prize commissioners of this District, of the arrival of the property and of the place where the same may be found.

#### XII.

Upon receipt of notice thereof from the captors or District Judge, the prize commissioners shall take possession of the prize property and safely keep the same, subject to the order of the Court, and shall without delay, report to the Court a full and particular list and description of the prize property, and the condition of the same, whether in good order, or whether perishing, perishable, or liable to decay or damage.

#### XIII.

If no notification shall within reasonable time be given by

the captors, or by any person in their behalf, of any property which may be brought as prize within this District, and the prize commissioners shall become informed thereof by any means, it shall be the duty of the said commissioners to repair to the place where such property is, and proceed in respect to the same as if notice had been given by the captors.

#### XIV.

The captors shall without delay, after the arrival of the prize property within the District, deliver to the prize commissioners all such papers, documents and writings as shall have been found on board the captured vessel, or which have any reference to, or connection with, the captured property, and which are in the possession, custody or power of the captors.

#### XV.

The said papers, documents and writings shall be regularly marked and numbered by the commissioners, and the captors, prize master or some other person who was present at the taking of the prize, and saw that such documents, papers and writings were found with the prize, shall make a deposition before the commissioners that the same have been delivered up to the commissioners as they were found or received, without any fraud, subduction or embezzlement. If any documents, papers or writings, relative to or connected with the captured property are missing or wanting, the deponent shall in said deposition account for the same according to the best of his knowledge, information and belief. The deponent shall further swear that if at any time thereafter, and before the final condemnation or acquittal of the said property, any further or other papers relating to the said captured property shall be found or discovered to the knowledge of the deponent, they shall also be delivered up, or information thereof given to the commissioners or to this Court; which deposition shall be reduced to writing by the commissioners, and shall

be retained by them, together with the documents, writings and papers delivered up to them by the captors, until the examination of witnesses shall have been taken as hereinafter provided.

## XVI.

The prize commissioners shall, without delay, after any captured property shall have been brought within the jurisdiction of this Court, proceed to examine, under oath, upon written interrogatories, the prize master and crew, the persons captured with, or who claim the captured property, and such other witnesses as they may deem proper and necessary; and having reduced such examination to writing, shall transmit the same, together with the documents, writings and papers received from the captors, the deposition of the captor, prize master; or other person in relation thereto, and the information they may have received in regard to the said captured property, under cover and under their seals, to this Court, addressed to the Clerk thereof, and expressing on the said cover to what captured property the said documents relate; which said cover shall not be opened without the order of the Court.

## XVII.

If the captors, prize master, or other persons having charge of the same, shall neglect or refuse within a reasonable time to deliver up to the commissioners, the documents, papers and writings relating to the captured property, or to make affidavit in regard to the same, as required by these rules, or shall neglect or refuse to produce, or cause to be produced, witnesses to be examined by the commissioners, after having been notified in writing to do so by the commissioners, it shall be the duty of the commissioners forthwith to report the same to the Court.

(JUNE 23, 1864.)

## XVIII.

*Ordered*, That from and after this date the admission fee of attorneys and counselors admitted to practice in this Court shall be five dollars.

(JUNE 5, 1865.)

## XIX.

*Ordered*, That the oath prescribed by the act of Congress, of January 24, 1865, entitled "An Act supplementary to an Act entitled an Act to prescribe an Oath of Office, and for other purposes," approved July 2, 1862, may be taken and subscribed before the Clerk of this Court, or any United States Commissioner, or Notary Public, and when so taken and subscribed and filed with the Clerk of this Court shall have the like effect as if taken and subscribed in open Court.

(FEBRUARY 10, 1866.)

## XX.

*Ordered*, That hereafter no person shall be selected to serve as a juror in this Court who shall directly or indirectly by himself, or others, make application therefor. And no person who has served, or shall hereafter serve, as a member of the Grand or Petit Jury at any term of this Court shall be competent to serve as a Petit Juror at any subsequent term held within one year thereafter.

(MARCH 20, 1867.)

## XXI.

*Ordered*, That hereafter all moneys paid into the Registry of the Court shall be deposited in the Ridgely National Bank of Springfield, Illinois.

(JANUARY 13, 1868.)

## XXII.

*Ordered*, That in all cases of seizures made at Cairo under process in Admiralty, where public notice is required to be given, such notice may be published in one of the newspapers published at Cairo.

(SEPTEMBER 2, 1868.)

## XXIII.

Process may be made returnable to the next term of the Court to be held at Cairo, notwithstanding a term of the Court shall intervene at Springfield. In like manner, process may be made returnable to the next term of the Court to be held at Springfield, notwithstanding a term of the Court shall intervene at Cairo.

## XXIV.

No causes shall be entered upon the docket for trial at Cairo except such as are made returnable to, or are continued to, a term of the Court to be held at Cairo, and such as the Court shall direct to be tried at Cairo. All causes continued at any term of the Court held at Springfield shall stand continued to the next succeeding term to be held at Springfield, and all causes continued at any term of the Court held at Cairo shall stand continued to the next succeeding term to be held at Cairo, unless otherwise specially ordered.

## XXV.

No grand or petit jury shall be drawn or summoned to attend any term of the Court to be held at Cairo, unless specially ordered by the Court.

(MARCH 8, 1871.)

## XXVI.

It shall be lawful to take the depositions of witnesses in any Admiralty cause pending in this Court upon giving to the adverse party, or his attorney, one day's notice of the time and place of taking the same, and in addition thereto (if the deposition shall be taken at a place other than the place where the Court is held, at which the cause is to be tried), one day, Sundays excluded, for every thirty miles travel from the place of holding Court to the place where the deposition is to be taken, but in no case to exceed ten days. In cases *in rem*, where property has been seized, and is in custody, under process of the Court, such notice may, at any time after the return day of the process, if no claim has been interposed in the cause, be served upon the person in whose custody such property may be, and shall have the same effect as if personally served upon a party or his attorney. Such depositions may be taken before the Judge of any Court, Justice of the Peace, Clerk of a Court of Record, Notary Public, or United States Commissioner.

(APRIL 12, 1871.)

## XXVII.

*Ordered*, That hereafter all moneys paid into the Registry of the Court shall be deposited in the First National Bank of Springfield, Illinois.

(OCTOBER 10, 1872.)

## XXVIII.

Unless otherwise specially ordered, any Admiralty cause in which the process is served at Cairo and is made returnable to Springfield, may, upon the application of the libellant, be transferred to Cairo for trial.

(MARCH 3, 1873.)

XXIX.

*Ordered*, That moneys paid into the Registry of the Court may be deposited in the State National Bank of Springfield, Illinois.



# RULES IN BANKRUPTCY

ADOPTED BY THE

## DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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(APRIL 20, 1868.)

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### I.

All moneys paid into the registry of the Court shall be deposited in the Ridgely National Bank, of Springfield, Illinois, and shall not be drawn from such depository unless upon a check signed by the Clerk and countersigned by the Judge. All moneys received by assignees in the course of any proceedings in bankruptcy, shall be paid into the registry of the Court, and shall be forthwith deposited by the Clerk in the designated depository. But this rule shall not prevent the assignee from retaining out of the moneys in his hands all his necessary disbursements and the compensation allowed him by the Court for his services.

### II.

Opposition to a bankrupt's discharge may be filed with and heard before the Register, who shall take testimony thereon,

and report the same to the Court with his opinion, on or before the day fixed for the hearing of the bankrupt's petition for discharge; and in case objections are made before the Court, the same shall be referred to and heard before the Register, who shall report the testimony, together with his opinion thereon, to the Court. Upon filing the report and opinion of the Register, the Clerk shall notify the bankrupt and the opposing creditor of such filing; and if no exceptions are filed thereto within twenty days thereafter, the opinion of the Register shall stand approved, and the discharge shall be granted or refused in accordance therewith.

(MARCH 17, 1870.)

### III.

When a homestead is claimed by a bankrupt as exempt from the operation of the bankrupt law, and the property upon which the bankrupt resides and claims such homestead exemption is, in the opinion of the assignee, of greater value than one thousand dollars, and such assignee is of opinion that the bankrupt is entitled to a homestead thereon, he shall notify the bankrupt to designate in writing some disinterested person to act as one of three commissioners to appraise said property and set off to said bankrupt his homestead thereon. The assignee shall also designate in writing some disinterested person to act as one of said commissioners, and the two so designated shall in like manner select a third. The three commissioners so selected shall, upon oath, to be administered to them by a Register in Bankruptcy or Commissioner of a Circuit Court of the United States, and returned with their report, appraise said property, and if in their opinion the same is not of greater value than one thousand dollars, the assignee shall, upon confirmation of their report, set off the same to the bankrupt under the provisions of the 14th section of the bankrupt law.

If in the opinion of said commissioners said property is of a greater value than one thousand dollars, and can be divided

without injury to the interests of the bankrupt's estate, they shall set off to said bankrupt so much thereof, including the dwelling house in which the bankrupt resides, as shall, in their opinion, be of the value of one thousand dollars, and the residue of said premises shall be sold by the assignee in such manner as the Court, by general or special order, may direct.

If in the opinion of said commissioners said property is of greater value than one thousand dollars, and cannot be divided without injury, the bankrupt may, within twenty days after confirmation of their report, pay to the assignee the excess of the appraised value of said property over and above the sum of one thousand dollars, and the assignee shall thereupon convey said property to said bankrupt. In default of such payment the property shall be sold by the assignee in such manner as the Court, by general or special order, may direct, and out of the proceeds thereof he shall pay to the bankrupt the sum of one thousand dollars in lieu of his homestead.

The commissioners shall, as soon as they have completed their duties, deliver their report, with their appointment and oath as such commissioners thereto attached, to the assignee, and shall receive as compensation for their services the sum of five dollars each, for each day actually and necessarily employed in making the appraisal and setting off the homestead, together with their actual and necessary travelling expenses while so employed, to be paid by the assignee out of any moneys in his hands belonging to the estate of the bankrupt.

The assignee, as soon as he shall receive the report of the commissioners, shall deliver a copy of the same to the bankrupt, and file the original in the Clerk's office, and unless exceptions are filed to said report within twenty days after such filing, the same shall stand approved.

If the bankrupt shall neglect or refuse to designate in writing a person to act as one of said commissioners within twenty days after he shall have been notified by the assignee, as provided in this rule, the assignee shall designate and appoint all of said commissioners.

## IV.

Unless otherwise specially ordered by the Court, the assignee shall, as soon as may be after the same shall come to his hands; sell all unencumbered estate of the bankrupt, both real and personal, not exempt from the operation of the bankrupt law, at public sale to the highest and best bidder for cash, and shall give at least ten days public notice in sales of personal property, and at least twenty days public notice in sales of real estate, of the time, place, and terms of sale, and of the articles or property to be sold, by advertisement in one or more newspapers to be designated by the Register in the particular case, and by posted hand-bills or otherwise as the Register may direct.\* All sales of real estate shall, unless otherwise specially ordered by the Court, be made at such place, within the county where the same is situated, as in the opinion of the assignee will secure the most advantageous sale. Personal property may be sold in such lots and at such place as the assignee may think best for the interest of the estate.

No sales shall be made by the assignee otherwise than as herein provided, unless by special order of the Court, upon the petition of the assignee, or a creditor, or other person interested, and for good cause shown, but no special order shall be required for making public sales of real or personal estate in the manner provided for in this rule.

The assignee shall file in the Clerk's office without delay, a report of any sales of real estate made by him under any general or special order of the Court, setting forth the time and place of sale, what notice of sale, if any, was given, the property sold, the purchaser or purchasers, and the price paid for the same, and if public notice of such sale was given, shall attach to his report a copy of the advertisement with the certificate of the publisher or publishers of the newspapers in

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(\*) Section 4 of the Act of June 22, 1874, requires all notices of public sales to be published *once a week for three successive weeks* in a newspaper or newspapers *to be designated by the Judge*.

which the same was published, that the same was published as required.

If no exceptions are filed to such report within twenty days after the same is filed, the report shall stand approved, and the assignee shall execute and deliver to the purchasers all necessary deeds and conveyances of the property so sold.

(APRIL 11, 1870.)

V.

In addition to the fees and expenses allowed to the Messenger by the 47th section of the bankrupt act, and such further allowance as may be made, for cause shown, in special cases, the following compensation shall be allowed and paid to the Marshal as Messenger, for his services in bankrupt causes.

For service of any writ or other process, order of Court, or notice, where personal service is required, except summons of witness and notices to creditors, under warrants, (form 6 and 59) two dollars for each person upon whom such service may be made, and five dollars for each day actually and necessarily employed in making such service.

For making out notices to creditors under warrants, (form 6 and 59) five cents for each folio of one hundred words, and for making copies of writs or other papers, where the same are required to be served by copy, ten cents for each folio of one hundred words.

For serving summons of witness, fifty cents for each person upon whom the same may be served.

For transporting persons arrested under any warrant or order of Court, five cents per mile for each person, and five dollars per day and five cents per mile for each guard, when necessary.

For each day actually and necessarily employed in taking possession of property under any warrant or order of Court, making inventory, &c., five dollars.

(APRIL 12, 1871.)

## VI.

*Ordered*, That hereafter all moneys paid into the Registry of the Court shall be deposited in the First National Bank of Springfield, Illinois.

(JULY 25, 1871.)

## VII.

All publications in bankruptcy, unless otherwise ordered, shall be made in a newspaper, to be designated by the Register, published in the county in which the bankrupt has resided or carried on business for the six months, or for the longest period during the six months next immediately preceding the time of filing the petition for adjudication of bankruptcy by or against him.

Lists of the newspapers designated by the Registers under this rule, containing the names of the newspapers, the place and times of publication, and the names of the publishers, shall be filed and entered of record in the Clerk's office.

Notices required to be given by the Marshal, in pursuance of the warrant, shall be published once a week for two successive weeks.

Notice by the assignee of his appointment shall be published once a week for three successive weeks. Notice by the assignee of the second or other meetings of creditors shall be published once a week for two successive weeks.

Notice by the Clerk of the bankrupt's petition for discharge shall be published once a week for four successive weeks.

A copy of the paper containing the first publication of any notice in bankruptcy shall be delivered or sent by mail by the publisher to the officer by whose direction such publication was made, and as soon as the last publication of such notice has been made the publisher shall deliver or send by mail to such officer a certificate of such publication, with a copy of the notice thereto attached, in the following form.

STATE OF ILLINOIS, COUNTY OF ..... }  
 TOWN (OR CITY) OF ..... } ss.

I, the undersigned, publisher of the ....., a public newspaper printed and published in the town (*or city*), county and State aforesaid, do hereby certify that a notice, of which the annexed is a true copy, has been regularly published in said paper once a week for ..... successive weeks (*or otherwise as the case may be*), commencing on the ..... day of ....., A. D. ...., and ending on the ..... day of ....., A. D. ....

Given under my hand at ..... aforesaid this ..... day of ....., A. D. ....

.....,  
 Publisher.

And the officer required to make such publication shall attach the publisher's certificate thereof to his return or report.

The following fees and no more shall be paid for publishing notices in bankruptcy and furnishing certificates thereof, and shall be payable by the officer by whose direction the publication was made, upon being furnished with such certificate, viz.: For publishing twice the notice by the Marshal, under the warrant, three dollars; for publishing three times the notice by the Assignee of his appointment, three dollars; for publishing twice the notice by the Assignee of a meeting of creditors, four dollars; for publishing four times the notice by the Clerk of the hearing of the bankrupt's petition for a discharge, six dollars. All other publications shall be paid for as nearly as may be at the same rates.

(MARCH 3, 1873.)

VIII.

*Ordered*, That moneys paid into the Registry of the Court may be deposited in the State National Bank of Springfield, Illinois.

(JULY 21, 1874.)

## IX.

It is ordered by the Court that hereafter, until otherwise ordered, but twenty-five dollars shall be required to be deposited with the Clerk as security for Register's fees under the provisions of the forty-seventh section of the Bankrupt Act, and that such deposit be paid to the Register by the Clerk as soon as the warrant issues.



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